

# PUBLIC INTERNATIONAL LAW DOCUMENTS & MATERIALS



edited by Michał Stępień

27<sup>th</sup> February 2019

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27<sup>th</sup> February 2019

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Cover art: *Ratification of the Peace of Münster between Spain and the Dutch Republic in the town hall of Münster, 15 May 1648* by Gerard ter Borch, 1648

Details and license: [http://commons.wikimedia.org/wiki/File:Westfaelischer\\_Friede\\_in\\_Muenster\\_%28Gerard\\_Terborch\\_1648%29.jpg](http://commons.wikimedia.org/wiki/File:Westfaelischer_Friede_in_Muenster_%28Gerard_Terborch_1648%29.jpg)

Description of picture, website of The Rijksmuseum, <https://www.rijksmuseum.nl/en/collection/SK-C-1683>:

This depicts an exceptionally important historical moment: when the Dutch and Spanish ratified a peace treaty ending a war that had lasted 80 years. The event took place on 15 May 1648 in the town hall of the German city of Münster. The Dutch delegates are at the left, the Spanish ones at the right. Before them on the table are two copies of the treaty, which were placed in the little chests and delivered to Madrid and The Hague.

Sixth edition



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# United Nations Charter 1945

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

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## **Chapter I**

### **Purposes and Principles**

#### **Article 1**

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

#### **Article 2**

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

## **Chapter II Membership**

### **Article 3**

The original Members of the United Nations shall be the states<sup>1</sup> which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of 1 January 1942, sign the present Charter and ratify it in accordance with Article 110.

### **Article 4**

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.
2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

### **Article 5**

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

### **Article 6**

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

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<sup>1</sup>Belarus, Ukraine and India are also original members of the UN. Their sovereignty was limited when the UN Charter entered into force.

## **Chapter III Organs**

### **Article 7**

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice and a Secretariat.
2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter

### **Article 8**

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

## **Chapter IV The General Assembly**

### **Composition**

#### **Article 9**

1. The General Assembly shall consist of all the Members of the United Nations.
2. Each Member shall have not more than five representatives in the General Assembly.

### **Functions and Powers**

#### **Article 10**

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

#### **Article 11**

1. The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.
3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.
4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

#### **Article 12**

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.
2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

#### **Article 13**

1. The General Assembly shall initiate studies and make recommendations for the purpose of:
  - a. promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;
  - b. promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.
2. The further responsibilities, functions and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

**Article 14**

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

**Article 15**

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.
2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

**Article 16**

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

**Article 17**

1. The General Assembly shall consider and approve the budget of the Organization.
2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.
3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

**Voting****Article 18**

1. Each member of the General Assembly shall have one vote.
2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of mem-

bers of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

### **Article 19**

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

### **Procedure**

#### **Article 20**

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

#### **Article 21**

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

#### **Article 22**

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

## **Chapter V The Security Council**

### **Composition**

#### **Article 23**

1. The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United



Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.
3. Each member of the Security Council shall have one representative.

## **Functions and Powers**

### **Article 24**

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.
3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

### **Article 25**

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

### **Article 26**

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

## **Voting**

### **Article 27**

1. Each member of the Security Council shall have one vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

## **Procedure**

### **Article 28**

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.
2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.
3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.

### **Article 29**

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

### **Article 30**

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

### **Article 31**

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

**Article 32**

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

## **Chapter VI Pacific Settlement of Disputes**

**Article 33**

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

**Article 34**

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

**Article 35**

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.
2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.
3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

**Article 36**

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.
2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.
3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

**Article 37**

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.
1. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate

**Article 38**

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

## **Chapter VII**

### **Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression**

**Article 39**

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

**Article 40**

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as

it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

#### **Article 41**

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

#### **Article 42**

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

#### **Article 43**

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.
2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.
3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

#### **Article 44**

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

**Article 45**

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

**Article 46**

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

**Article 47**

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.
2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.
3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.
4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

**Article 48**

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.
2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

**Article 49**

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

**Article 50**

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

**Article 51**

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

## **Chapter VIII Regional Arrangements**

**Article 52**

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.
2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.
3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.
4. This Article in no way impairs the application of Articles 34 and 35.

**Article 53**

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.
2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

**Article 54**

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

## **Chapter IX International Economic and Social Co-operation**

**Article 55**

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

**Article 56**

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.



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**Article 57**

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.
2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

**Article 58**

The Organization shall make recommendations for the co-ordination of the policies and activities of the specialized agencies.

**Article 59**

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

**Article 60**

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

## **Chapter X**

### **The Economic and Social Council**

**Composition****Article 61**

1. The Economic and Social Council shall consist of fifty-four Members of the United Nations elected by the General Assembly.
2. Subject to the provisions of paragraph 3, eighteen members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.
3. At the first election after the increase in the membership of the Economic and Social Council from twenty-seven to fifty-four members, in addition to the members elected in place of the nine members whose term of office expires at the end of that year, twenty-seven additional members shall be elected. Of these twenty-

seven additional members, the term of office of nine members so elected shall expire at the end of one year, and of nine other members at the end of two years, in accordance with arrangements made by the General Assembly.

4. Each member of the Economic and Social Council shall have one representative.

### **Functions and Powers**

#### **Article 62**

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly to the Members of the United Nations, and to the specialized agencies concerned.
2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.
3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.
4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

#### **Article 63**

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.
2. It may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

#### **Article 64**

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.
2. It may communicate its observations on these reports to the General Assembly.

**Article 65**

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

**Article 66**

1. The Economic and Social Council shall perform such functions as fall within its competence in connexion with the carrying out of the recommendations of the General Assembly.
2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.
3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

**Voting****Article 67**

1. Each member of the Economic and Social Council shall have one vote.
2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

**Procedure****Article 68**

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

**Article 69**

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

**Article 70**

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

**Article 71**

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

**Article 72**

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.
2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

## **Chapter XI Declaration Regarding Non-Self-Governing Territories**

**Article 73**

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
- c. to further international peace and security;
- d. to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and
- e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statist-

ical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

#### **Article 74**

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

## **Chapter XII International Trusteeship System**

#### **Article 75**

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

#### **Article 76**

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- a. to further international peace and security;
- b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
- c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

**Article 77**

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:
  - a. territories now held under mandate;
  - b. territories which may be detached from enemy states as a result of the Second World War; and
  - c. territories voluntarily placed under the system by states responsible for their administration.
2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

**Article 78**

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

**Article 79**

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

**Article 80**

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.
2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

**Article 81**

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the

administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

### **Article 82**

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

### **Article 83**

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment shall be exercised by the Security Council.
2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.
3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

### **Article 84**

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defence and the maintenance of law and order within the trust territory.

### **Article 85**

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.
2. The Trusteeship Council, operating under the authority of the General Assembly shall assist the General Assembly in carrying out these functions.

## **Chapter XIII**

### **The Trusteeship Council**

#### **Composition**

##### **Article 86**

1. The Trusteeship Council shall consist of the following Members of the United Nations:
  - a. those Members administering trust territories;
  - b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and
  - c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.
2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

#### **Functions and Powers**

##### **Article 87**

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

- a. consider reports submitted by the administering authority;
- b. accept petitions and examine them in consultation with the administering authority;
- c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
- d. take these and other actions in conformity with the terms of the trusteeship agreements.

##### **Article 88**

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.



## **Voting**

### **Article 89**

1. Each member of the Trusteeship Council shall have one vote.
2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

## **Procedure**

### **Article 90**

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.
2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

### **Article 91**

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

## **Chapter XIV** **The International Court of Justice**

### **Article 92**

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute<sup>1</sup>, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

### **Article 93**

1. All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.
2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

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<sup>1</sup>Page 80, ICJ Statute.

**Article 94**

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

**Article 95**

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

**Article 96**

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.
2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

## **Chapter XV The Secretariat**

**Article 97**

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

**Article 98**

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

**Article 99**

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

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**Article 100**

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.
2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

**Article 101**

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.
2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.
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.

## **Chapter XVI** **Miscellaneous Provisions**

**Article 102**

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

**Article 103**

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

**Article 104**

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

**Article 105**

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.
2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.
3. The General Assembly 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 the Members of the United Nations for this purpose.

## **Chapter XVII Transitional Security Arrangements**

**Article 106**

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, 30 October 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

**Article 107**

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

## **Chapter XVIII Amendments**

**Article 108**

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members

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of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

#### **Article 109**

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council.

Each Member of the United Nations shall have one vote in the conference.

1. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.
2. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

## **Chapter XIX Ratification and Signature**

#### **Article 110**

1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.
2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed.
3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.
4. The states signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

**Article 111**

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter.

DONE at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

# Kellogg-Briand Pact 1928

## (General Treaty for the Renunciation of War)

THE PRESIDENT OF THE GERMAN REICH, THE PRESIDENT OF THE UNITED STATES OF AMERICA, HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE FRENCH REPUBLIC, HIS MAJESTY THE KING OF GREAT BRITAIN IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA, HIS MAJESTY THE KING OF ITALY, HIS MAJESTY THE EMPEROR OF JAPAN, THE PRESIDENT OF THE REPUBLIC OF POLAND THE PRESIDENT OF THE CZECHOSLOVAK REPUBLIC,

Deeply sensible of their solemn duty to promote the welfare of mankind;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this Treaty;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present Treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy;

Have decided to conclude a Treaty and for that purpose have appointed as their respective Plenipotentiaries:

[...]

who, having communicated to one another their full powers found in good and due form have agreed upon the following articles:

**Article I**

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.

**Article II**

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

**Article III**

The present Treaty shall be ratified by the High Contracting Parties named in the Preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at Washington.

This Treaty shall, when it has come into effect as prescribed in the preceding paragraph, remain open as long as may be necessary for adherence by all the other Powers of the world. Every instrument evidencing the adherence of a Power shall be deposited at Washington and the Treaty shall immediately upon such deposit become effective as; between the Power thus adhering and the other Powers parties hereto.

It shall be the duty of the Government of the United States to furnish each Government named in the Preamble and every Government subsequently adhering to this Treaty with a certified copy of the Treaty and of every instrument of ratification or adherence. It shall also be the duty of the Government of the United States telegraphically to notify such Governments immediately upon the deposit with it of each instrument of ratification or adherence.

IN FAITH WHEREOF the respective Plenipotentiaries have signed this Treaty in the French and English languages both texts having equal force, and hereunto affix their seals.

DONE at Paris, the twenty seventh day of August in the year one thousand nine hundred and twenty-eight.



# **Resolution 2625 (XXV) of the UN General Assembly. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations**

*The General Assembly,*

*Recalling* its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965, 2181 (XXI) of 12 December 1966, 2327 (XXII) of 18 December 1967, 2463 (XXIII) of 20 December 1968 and 2533 (XXIV) of 8 December 1969, in which it affirmed the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States,

*Having* considered the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, which met in Geneva from 31 March to 1 May 1970,

*Emphasizing* the paramount importance of the Charter of the United Nations for the maintenance of international peace and security and for the development of Friendly relations and Co-operation among States,

*Deeply convinced* that the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations on the occasion of the twenty-

fifth anniversary of the United Nations would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in promoting the rule of law among nations and particularly the universal application of the principles embodied in the Charter,

*Considering* the desirability of the wide dissemination of the text of the Declaration,

1. *Approves* the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the text of which is annexed to the present resolution;
2. *Expresses its appreciation* to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States for its work resulting in the elaboration of the Declaration;
3. *Recommends* that all efforts be made so that the Declaration becomes generally known.

## ANNEX

### DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

#### PREAMBLE

*The General Assembly,*

*Reaffirming* in the terms of the Charter of the United Nations that the maintenance of international peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes of the United Nations,

*Recalling* that the peoples of the United Nations are determined to practise tolerance and live together in peace with one another as good neighbours,

*Bearing in mind* the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,

*Bearing in mind* also the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

*Considering* that the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfillment in good faith of the obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations,

*Noting* that the great political, economic and social changes and scientific progress which have taken place in the world since the adoption of the Charter give increased importance to these principles and to the need for their more effective application in the conduct of States wherever carried on,

*Recalling* the established principle that outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means, and mindful of the fact that consideration is being given in the United Nations to the question of establishing other appropriate provisions similarly inspired,

*Convinced* that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security,

*Recalling* the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,

*Considering* it essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

*Considering* it equally essential that all States shall settle their international disputes by peaceful means in accordance with the Charter,

*Reaffirming*, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations,

*Convinced* that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security,

*Convinced* that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that

its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,

*Convinced* in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter,

*Considering* the provisions of the Charter as a whole and taking into account the role of relevant resolutions adopted by the competent organs of the United Nations relating to the content of the principles,

*Considering* that the progressive development and codification of the following principles:

- (a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,
- (b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,
- (c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,
- (d) The duty of States to co-operate with one another in accordance with the Charter,
- (e) The principle of equal rights and self-determination of peoples,
- (f) The principle of sovereign equality of States,
- (g) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

so as to secure their more effective application within the international community, would promote the realization of the purposes of the United Nations,

Having considered the principles of international law relating to friendly relations and co-operation among States,

1. Solemnly proclaims the following principles:

*The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations*

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such

a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law. In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

States have a duty to refrain from acts of reprisal involving the use of force.

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. Nothing in the foregoing shall be construed as affecting:

- (a) Provisions of the Charter or any international agreement prior to the Charter regime and valid under international law; or
- (b) The powers of the Security Council under the Charter.

All States shall pursue in good faith negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

All States shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective.

Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

*The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered*

Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered.

States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

States parties to an international dispute, as well as other States shall refrain from any action which may aggravate the Situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

International disputes shall be settled on the basis of the Sovereign equality of States and in accordance with the Principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes.

*The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter*

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as reflecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

*The duty of States to co-operate with one another in accordance with the Charter*

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

To this end:

- (a) States shall co-operate with other States in the maintenance of international peace and security;
- (b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;
- (c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;
- (d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

*The principle of equal rights and self-determination of peoples*

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

- (a) To promote friendly relations and co-operation among States; and
- (b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

*The principle of sovereign equality of States*

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

In particular, sovereign equality includes the following elements:

- (a) States are judicially equal;
- (b) Each State enjoys the rights inherent in full sovereignty;
- (c) Each State has the duty to respect the personality of other States;
- (d) The territorial integrity and political independence of the State are inviolable;
- (e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;
- (f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.



*The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter*

Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law.

Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.

Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.

#### GENERAL PART

2. *Declares that:*

In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles.

Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration.;

3. *Declares further that:*

The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.

# Resolution 1483 (2003) of the UN Security Council on situation in Iraq

Adopted by the Security Council at its 4761<sup>st</sup> meeting, on 22 May 2003

*The Security Council,*

*Recalling* all its previous relevant resolutions,

*Reaffirming* the sovereignty and territorial integrity of Iraq,

*Reaffirming also* the importance of the disarmament of Iraqi weapons of mass destruction and of eventual confirmation of the disarmament of Iraq,

*Stressing* the right of the Iraqi people freely to determine their own political future and control their own natural resources, welcoming the commitment of all parties concerned to support the creation of an environment in which they may do so as soon as possible, and expressing resolve that the day when Iraqis govern themselves must come quickly,

*Encouraging* efforts by the people of Iraq to form a representative government based on the rule of law that affords equal rights and justice to all Iraqi citizens without regard to ethnicity, religion, or gender, and, in this connection, recalls resolution 1325 (2000) of 31 October 2000,

*Welcoming* the first steps of the Iraqi people in this regard, and noting in this connection the 15 April 2003 Nasiriyah statement and the 28 April 2003 Baghdad statement,

*Resolved* that the United Nations should play a vital role in humanitarian relief, the reconstruction of Iraq, and the restoration and establishment of national and local institutions for representative governance,

*Noting* the statement of 12 April 2003 by the Ministers of Finance and Central Bank Governors of the Group of Seven Industrialized Nations in which the members

recognized the need for a multilateral effort to help rebuild and develop Iraq and for the need for assistance from the International Monetary Fund and the World Bank in these efforts,

*Welcoming also* the resumption of humanitarian assistance and the continuing efforts of the Secretary-General and the specialized agencies to provide food and medicine to the people of Iraq,

*Welcoming* the appointment by the Secretary-General of his Special Adviser on Iraq,

*Affirming* the need for accountability for crimes and atrocities committed by the previous Iraqi regime,

*Stressing* the need for respect for the archaeological, historical, cultural, and religious heritage of Iraq, and for the continued protection of archaeological, historical, cultural, and religious sites, museums, libraries, and monuments,

*Noting* the letter of 8 May 2003 from the Permanent Representatives of the United States of America and the United Kingdom of Great Britain and Northern Ireland to the President of the Security Council (S/2003/538) and recognizing the specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers under unified command (the "Authority"),

*Noting further* that other States that are not occupying powers are working now or in the future may work under the Authority,

*Welcoming further* the willingness of Member States to contribute to stability and security in Iraq by contributing personnel, equipment, and other resources under the Authority,

*Concerned* that many Kuwaitis and Third-State Nationals still are not accounted for since 2 August 1990,

*Determining* that the situation in Iraq, although improved, continues to constitute a threat to international peace and security,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Appeals* to Member States and concerned organizations to assist the people of Iraq in their efforts to reform their institutions and rebuild their country, and to contribute to conditions of stability and security in Iraq in accordance with this resolution;
2. *Calls upon* all Member States in a position to do so to respond immediately to the humanitarian appeals of the United Nations and other international organizations for Iraq and to help meet the humanitarian and other needs of the Iraqi people by providing food, medical supplies, and resources necessary for reconstruction and rehabilitation of Iraq's economic infrastructure;

3. *Appeals* to Member States to deny safe haven to those members of the previous Iraqi regime who are alleged to be responsible for crimes and atrocities and to support actions to bring them to justice;
4. *Calls upon* the Authority, consistent with the Charter of the United Nations and other relevant international law, to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people can freely determine their own political future;
5. *Calls upon* all concerned to comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907;
6. *Calls upon* the Authority and relevant organizations and individuals to continue efforts to locate, identify, and repatriate all Kuwaiti and Third-State Nationals or the remains of those present in Iraq on or after 2 August 1990, as well as the Kuwaiti archives, that the previous Iraqi regime failed to undertake, and, in this regard, directs the High-Level Coordinator, in consultation with the International Committee of the Red Cross and the Tripartite Commission and with the appropriate support of the people of Iraq and in coordination with the Authority, to take steps to fulfil his mandate with respect to the fate of Kuwaiti and Third-State National missing persons and property;
7. *Decides* that all Member States shall take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since the adoption of resolution 661 (1990) of 6 August 1990, including by establishing a prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed, and calls upon the United Nations Educational, Scientific, and Cultural Organization, Interpol, and other international organizations, as appropriate, to assist in the implementation of this paragraph;
8. *Requests* the Secretary-General to appoint a Special Representative for Iraq whose independent responsibilities shall involve reporting regularly to the Council on his activities under this resolution, coordinating activities of the United Nations in post-conflict processes in Iraq, coordinating among United Nations and international agencies engaged in humanitarian assistance and reconstruction activities in Iraq, and, in coordination with the Authority, assisting the people of Iraq through:
  - (a) coordinating humanitarian and reconstruction assistance by United Nations agencies and between United Nations agencies and non-governmental organizations;

- (b) promoting the safe, orderly, and voluntary return of refugees and displaced persons;
  - (c) working intensively with the Authority, the people of Iraq, and others concerned to advance efforts to restore and establish national and local institutions for representative governance, including by working together to facilitate a process leading to an internationally recognized, representative government of Iraq;
  - (d) facilitating the reconstruction of key infrastructure, in cooperation with other international organizations;
  - (e) promoting economic reconstruction and the conditions for sustainable development, including through coordination with national and regional organizations, as appropriate, civil society, donors, and the international financial institutions;
  - (f) encouraging international administration functions;
  - (g) efforts to contribute to basic civilian promoting the protection of human rights;
  - (h) encouraging international efforts to rebuild the capacity of the Iraqi civilian police force; and
  - (i) encouraging international efforts to promote legal and judicial reform;
9. *Supports* the formation, by the people of Iraq with the help of the Authority and working with the Special Representative, of an Iraqi interim administration as a transitional administration run by Iraqis, until an internationally recognized, representative government is established by the people of Iraq and assumes the responsibilities of the Authority;
10. *Decides* that, with the exception of prohibitions related to the sale or supply to Iraq of arms and related materiel other than those arms and related materiel required by the Authority to serve the purposes of this and other related resolutions, all prohibitions related to trade with Iraq and the provision of financial or economic resources to Iraq established by resolution 661 (1990) and subsequent relevant resolutions, including resolution 778 (1992) of 2 October 1992, shall no longer apply;
11. *Reaffirms* that Iraq must meet its disarmament obligations, encourages the United Kingdom of Great Britain and Northern Ireland and the United States of America to keep the Council informed of their activities in this regard, and underlines the intention of the Council to revisit the mandates of the United Nations Monitoring, Verification, and Inspection Commission and the International Atomic Energy Agency as set forth in resolutions 687 (1991) of 3 April 1991, 1284 (1999) of 17 December 1999, and 1441 (2002) of 8 November 2002;
12. *Notes* the establishment of a Development Fund for Iraq to be held by the Central Bank of Iraq and to be audited by independent public accountants approved by the

International Advisory and Monitoring Board of the Development Fund for Iraq and looks forward to the early meeting of that International Advisory and Monitoring Board, whose members shall include duly qualified representatives of the Secretary-General, of the Managing Director of the International Monetary Fund, of the Director-General of the Arab Fund for Social and Economic Development, and of the President of the World Bank;

13. *Notes further* that the funds in the Development Fund for Iraq shall be disbursed at the direction of the Authority, in consultation with the Iraqi interim administration, for the purposes set out in paragraph 14 below;
14. *Underlines* that the Development Fund for Iraq shall be used in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq;
15. *Calls upon* the international financial institutions to assist the people of Iraq in the reconstruction and development of their economy and to facilitate assistance by the broader donor community, and welcomes the readiness of creditors, including those of the Paris Club, to seek a solution to Iraq's sovereign debt problems;
16. *Requests* also that the Secretary-General, in coordination with the Authority, continue the exercise of his responsibilities under Security Council resolution 1472 (2003) of 28 March 2003 and 1476 (2003) of 24 April 2003, for a period of six months following the adoption of this resolution, and terminate within this time period, in the most cost effective manner, the ongoing operations of the "Oil-for-Food" Programme (the "Programme"), both at headquarters level and in the field, transferring responsibility for the administration of any remaining activity under the Programme to the Authority, including by taking the following necessary measures:
  - (a) to facilitate as soon as possible the shipment and authenticated delivery of priority civilian goods as identified by the Secretary-General and representatives designated by him, in coordination with the Authority and the Iraqi interim administration, under approved and funded contracts previously concluded by the previous Government of Iraq, for the humanitarian relief of the people of Iraq, including, as necessary, negotiating adjustments in the terms or conditions of these contracts and respective letters of credit as set forth in paragraph 4 (d) of resolution 1472 (2003);
  - (b) to review, in light of changed circumstances, in coordination with the Authority and the Iraqi interim administration, the relative utility of each approved and funded contract with a view to determining whether such contracts contain items required to meet the needs of the people of Iraq both now and during reconstruction, and to postpone action on those contracts determined to be of

questionable utility and the respective letters of credit until an internationally recognized, representative government of Iraq is in a position to make its own determination as to whether such contracts shall be fulfilled;

- (c) to provide the Security Council within 21 days following the adoption of this resolution, for the Security Council's review and consideration, an estimated operating budget based on funds already set aside in the account established pursuant to paragraph 8 (d) of resolution 986 (1995) of 14 April 1995, identifying:
- (i) all known and projected costs to the United Nations required to ensure the continued functioning of the activities associated with implementation of the present resolution, including operating and administrative expenses associated with the relevant United Nations agencies and programmes responsible for the implementation of the Programme both at Headquarters and in the field;
  - (ii) all known and projected costs associated with termination of the Programme;
  - (iii) all known and projected costs associated with restoring Government of Iraq funds that were provided by Member States to the Secretary-General as requested in paragraph 1 of resolution 778 (1992); and
  - (iv) all known and projected costs associated with the Special Representative and the qualified representative of the Secretary-General identified to serve on the International Advisory and Monitoring Board, for the six month time period defined above, following which these costs shall be borne by the United Nations;
- (d) to consolidate into a single fund the accounts established pursuant to paragraphs 8 (a) and 8 (b) of resolution 986 (1995);
- (e) to fulfil all remaining obligations related to the termination of the Programme, including negotiating, in the most cost effective manner, any necessary settlement payments, which shall be made from the escrow accounts established pursuant to paragraphs 8 (a) and 8 (b) of resolution 986 (1995), with those parties that previously have entered into contractual obligations with the Secretary-General under the Programme, and to determine, in coordination with the Authority and the Iraqi interim administration, the future status of contracts undertaken by the United Nations and related United Nations agencies under the accounts established pursuant to paragraphs 8 (b) and 8 (d) of resolution 986 (1995);
- (f) to provide the Security Council, 30 days prior to the termination of the Programme, with a comprehensive strategy developed in close coordination with the Authority and the Iraqi interim administration that would lead to the delivery of all relevant documentation and the transfer of all operational responsibility of the Programme to the Authority;

17. *Requests* further that the Secretary-General transfer as soon as possible to the Development Fund for Iraq 1 billion United States dollars from unencumbered funds in the accounts established pursuant to paragraphs 8 (a) and 8 (b) of resolution 986 (1995), restore Government of Iraq funds that were provided by Member States to the Secretary-General as requested in paragraph 1 of resolution 778 (1992), and decides that, after deducting all relevant United Nations expenses associated with the shipment of authorized contracts and costs to the Programme outlined in paragraph 16 (c) above, including residual obligations, all surplus funds in the escrow accounts established pursuant to paragraphs 8 (a), 8 (b), 8 (d), and 8 (f) of resolution 986 (1995) shall be transferred at the earliest possible time to the Development Fund for Iraq;
18. *Decides* to terminate effective on the adoption of this resolution the functions related to the observation and monitoring activities undertaken by the Secretary-General under the Programme, including the monitoring of the export of petroleum and petroleum products from Iraq;
19. *Decides* to terminate the Committee established pursuant to paragraph 6 of resolution 661 (1990) at the conclusion of the six month period called for in paragraph 16 above and further decides that the Committee shall identify individuals and entities referred to in paragraph 23 below;
20. *Decides* that all export sales of petroleum, petroleum products, and natural gas from Iraq following the date of the adoption of this resolution shall be made consistent with prevailing international market best practices, to be audited by independent public accountants reporting to the International Advisory and Monitoring Board referred to in paragraph 12 above in order to ensure transparency, and decides further that, except as provided in paragraph 21 below, all proceeds from such sales shall be deposited into the Development Fund for Iraq until such time as an internationally recognized, representative government of Iraq is properly constituted;
21. *Decides further* that 5 per cent of the proceeds referred to in paragraph 20 above shall be deposited into the Compensation Fund established in accordance with resolution 687 (1991) and subsequent relevant resolutions and that, unless an internationally recognized, representative government of Iraq and the Governing Council of the United Nations Compensation Commission, in the exercise of its authority over methods of ensuring that payments are made into the Compensation Fund, decide otherwise, this requirement shall be binding on a properly constituted, internationally recognized, representative government of Iraq and any successor thereto;
22. *Noting* the relevance of the establishment of an internationally recognized, representative government of Iraq and the desirability of prompt completion of the restructuring of Iraq's debt as referred to in paragraph 15 above, further decides



that, until December 31, 2007, unless the Council decides otherwise, petroleum, petroleum products, and natural gas originating in Iraq shall be immune, until title passes to the initial purchaser from legal proceedings against them and not be subject to any form of attachment, garnishment, or execution, and that all States shall take any steps that may be necessary under their respective domestic legal systems to assure this protection, and that proceeds and obligations arising from sales thereof, as well as the Development Fund for Iraq, shall enjoy privileges and immunities equivalent to those enjoyed by the United Nations except that the abovementioned privileges and immunities will not apply with respect to any legal proceeding in which recourse to such proceeds or obligations is necessary to satisfy liability for damages assessed in connection with an ecological accident, including an oil spill, that occurs after the date of adoption of this resolution;

23. *Decides* that all Member States in which there are:

- (a) funds or other financial assets or economic resources of the previous Government of Iraq or its state bodies, corporations, or agencies, located outside Iraq as of the date of this resolution, or
- (b) funds or other financial assets or economic resources that have been removed from Iraq, or acquired, by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction,

shall freeze without delay those funds or other financial assets or economic resources and, unless these funds or other financial assets or economic resources are themselves the subject of a prior judicial, administrative, or arbitral lien or judgement, immediately shall cause their transfer to the Development Fund for Iraq, it being understood that, unless otherwise addressed, claims made by private individuals or non-government entities on those transferred funds or other financial assets may be presented to the internationally recognized, representative government of Iraq; and decides further that all such funds or other financial assets or economic resources shall enjoy the same privileges, immunities, and protections as provided under paragraph 22;

24. *Requests* the Secretary-General to report to the Council at regular intervals on the work of the Special Representative with respect to the implementation of this resolution and on the work of the International Advisory and Monitoring Board and encourages the United Kingdom of Great Britain and Northern Ireland and the United States of America to inform the Council at regular intervals of their efforts under this resolution;

25. *Decides* to review the implementation of this resolution within twelve months of adoption and to consider further steps that might be necessary;

26. *Calls upon* Member States and international and regional organizations to contribute to the implementation of this resolution;
27. *Decides* to remain seized of this matter.

# Resolution 1973 (2011) of the UN Security Council on situation in Libya

Adopted by the Security Council at its 6498<sup>th</sup> meeting, on 17 March 2011

*The Security Council,*

*Recalling* its resolution 1970 (2011) of 26 February 2011,

*Deploring* the failure of the Libyan authorities to comply with resolution 1970 (2011),

*Expressing* grave concern at the deteriorating situation, the escalation of violence, and the heavy civilian casualties,

*Reiterating* the responsibility of the Libyan authorities to protect the Libyan population and reaffirming that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians,

*Condemning* the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions,

*Further condemning acts* of violence and intimidation committed by the Libyan authorities against journalists, media professionals and associated personnel and urging these authorities to comply with their obligations under international humanitarian law as outlined in resolution 1738 (2006),

*Considering* that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity,

*Recalling* paragraph 26 of resolution 1970 (2011) in which the Council expressed its readiness to consider taking additional appropriate measures, as necessary, to facilitate and support the return of humanitarian agencies and make available humanitarian and related assistance in the Libyan Arab Jamahiriya,

*Expressing its determination* to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel,

*Recalling* the condemnation by the League of Arab States, the African Union, and the Secretary General of the Organization of the Islamic Conference of the serious violations of human rights and international humanitarian law that have been and are being committed in the Libyan Arab Jamahiriya,

*Taking note* of the final communiqué of the Organisation of the Islamic Conference of 8 March 2011, and the communiqué of the Peace and Security Council of the African Union of 10 March 2011 which established an ad hoc High Level Committee on Libya,

*Taking note also* of the decision of the Council of the League of Arab States of 12 March 2011 to call for the imposition of a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in the Libyan Arab Jamahiriya,

*Taking note further* of the Secretary-General's call on 16 March 2011 for an immediate cease-fire,

*Recalling* its decision to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court, and stressing that those responsible for or complicit in attacks targeting the civilian population, including aerial and naval attacks, must be held to account,

*Reiterating its concern* at the plight of refugees and foreign workers forced to flee the violence in the Libyan Arab Jamahiriya, welcoming the response of neighbouring States, in particular Tunisia and Egypt, to address the needs of those refugees and foreign workers, and calling on the international community to support those efforts,

*Deploring* the continuing use of mercenaries by the Libyan authorities,

*Considering* that the establishment of a ban on all flights in the airspace of the Libyan Arab Jamahiriya constitutes an important element for the protection of civilians as well as the safety of the delivery of humanitarian assistance and a decisive step for the cessation of hostilities in Libya,

*Expressing concern* also for the safety of foreign nationals and their rights in the Libyan Arab Jamahiriya,

*Welcoming* the appointment by the Secretary General of his Special Envoy to Libya, Mr. Abdel-Elah Mohamed Al-Khatib and supporting his efforts to find a sustainable and peaceful solution to the crisis in the Libyan Arab Jamahiriya,

*Reaffirming* its strong commitment to the sovereignty, independence, territorial integrity and national unity of the Libyan Arab Jamahiriya,

*Determining* that the situation in the Libyan Arab Jamahiriya continues to constitute a threat to international peace and security,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Demands* the immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of, civilians;
2. *Stresses* the need to intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people and notes the decisions of the Secretary-General to send his Special Envoy to Libya and of the Peace and Security Council of the African Union to send its ad hoc High Level Committee to Libya with the aim of facilitating dialogue to lead to the political reforms necessary to find a peaceful and sustainable solution;
3. *Demands* that the Libyan authorities comply with their obligations under international law, including international humanitarian law, human rights and refugee law and take all measures to protect civilians and meet their basic needs, and to ensure the rapid and unimpeded passage of humanitarian assistance;

#### **Protection of civilians**

4. *Authorizes* Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and requests the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council;
5. *Recognizes* the important role of the League of Arab States in matters relating to the maintenance of international peace and security in the region, and bearing in mind Chapter VIII of the Charter of the United Nations, requests the Member States of the League of Arab States to cooperate with other Member States in the implementation of paragraph 4;

#### **No Fly Zone**

6. *Decides* to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians;

7. *Decides further* that the ban imposed by paragraph 6 shall not apply to flights whose sole purpose is humanitarian, such as delivering or facilitating the delivery of assistance, including medical supplies, food, humanitarian workers and related assistance, or evacuating foreign nationals from the Libyan Arab Jamahiriya, nor shall it apply to flights authorised by paragraphs 4 or 8, nor other flights which are deemed necessary by States acting under the authorisation conferred in paragraph 8 to be for the benefit of the Libyan people, and that these flights shall be coordinated with any mechanism established under paragraph 8;
8. *Authorizes* Member States that have notified the Secretary-General and the Secretary-General of the League of Arab States, acting nationally or through regional organizations or arrangements, to take all necessary measures to enforce compliance with the ban on flights imposed by paragraph 6 above, as necessary, and requests the States concerned in cooperation with the League of Arab States to coordinate closely with the Secretary General on the measures they are taking to implement this ban, including by establishing an appropriate mechanism for implementing the provisions of paragraphs 6 and 7 above,
9. *Calls upon* all Member States, acting nationally or through regional organizations or arrangements, to provide assistance, including any necessary over-flight approvals, for the purposes of implementing paragraphs 4, 6, 7 and 8 above;
10. *Requests* the Member States concerned to coordinate closely with each other and the Secretary-General on the measures they are taking to implement paragraphs 4, 6, 7 and 8 above, including practical measures for the monitoring and approval of authorised humanitarian or evacuation flights;
11. *Decides* that the Member States concerned shall inform the Secretary-General and the Secretary-General of the League of Arab States immediately of measures taken in exercise of the authority conferred by paragraph 8 above, including to supply a concept of operations;
12. *Requests* the Secretary-General to inform the Council immediately of any actions taken by the Member States concerned in exercise of the authority conferred by paragraph 8 above and to report to the Council within 7 days and every month thereafter on the implementation of this resolution, including information on any violations of the flight ban imposed by paragraph 6 above; Enforcement of the arms embargo
13. *Decides* that paragraph 11 of resolution 1970 (2011) shall be replaced by the following paragraph : “Calls upon all Member States, in particular States of the region, acting nationally or through regional organisations or arrangements, in order to ensure strict implementation of the arms embargo established by paragraphs 9 and 10 of resolution 1970 (2011), to inspect in their territory, including seaports and airports, and on the high seas, vessels and aircraft bound to or from the Libyan

Arab Jamahiriya, if the State concerned has information that provides reasonable grounds to believe that the cargo contains items the supply, sale, transfer or export of which is prohibited by paragraphs 9 or 10 of resolution 1970 (2011) as modified by this resolution, including the provision of armed mercenary personnel, calls upon all flag States of such vessels and aircraft to cooperate with such inspections and authorises Member States to use all measures commensurate to the specific circumstances to carry out such inspections”;

14. *Requests* Member States which are taking action under paragraph 13 above on the high seas to coordinate closely with each other and the Secretary-General and further requests the States concerned to inform the Secretary-General and the Committee established pursuant to paragraph 24 of resolution 1970 (2011) (“the Committee”) immediately of measures taken in the exercise of the authority conferred by paragraph 13 above;
15. *Requires* any Member State whether acting nationally or through regional organisations or arrangements, when it undertakes an inspection pursuant to paragraph 13 above, to submit promptly an initial written report to the Committee containing, in particular, explanation of the grounds for the inspection, the results of such inspection, and whether or not cooperation was provided, and, if prohibited items for transfer are found, further requires such Member States to submit to the Committee, at a later stage, a subsequent written report containing relevant details on the inspection, seizure, and disposal, and relevant details of the transfer, including a description of the items, their origin and intended destination, if this information is not in the initial report;
16. *Deplores* the continuing flows of mercenaries into the Libyan Arab Jamahiriya and calls upon all Member States to comply strictly with their obligations under paragraph 9 of resolution 1970 (2011) to prevent the provision of armed mercenary personnel to the Libyan Arab Jamahiriya;

### **Ban on flights**

17. *Decides* that all States shall deny permission to any aircraft registered in the Libyan Arab Jamahiriya or owned or operated by Libyan nationals or companies to take off from, land in or overfly their territory unless the particular flight has been approved in advance by the Committee, or in the case of an emergency landing;
18. *Decides* that all States shall deny permission to any aircraft to take off from, land in or overfly their territory, if they have information that provides reasonable grounds to believe that the aircraft contains items the supply, sale, transfer, or export of which is prohibited by paragraphs 9 and 10 of resolution 1970 (2011) as modified by this resolution, including the provision of armed mercenary personnel, except in the case of an emergency landing; Asset freeze

19. *Decides* that the asset freeze imposed by paragraph 17, 19, 20 and 21 of resolution 1970 (2011) shall apply to all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the Libyan authorities, as designated by the Committee, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, as designated by the Committee, and decides further that all States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the Libyan authorities, as designated by the Committee, or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them, as designated by the Committee, and directs the Committee to designate such Libyan authorities, individuals or entities within 30 days of the date of the adoption of this resolution and as appropriate thereafter;
20. *Affirms* its determination to ensure that assets frozen pursuant to paragraph 17 of resolution 1970 (2011) shall, at a later stage, as soon as possible be made available to and for the benefit of the people of the Libyan Arab Jamahiriya;
21. *Decides* that all States shall require their nationals, persons subject to their jurisdiction and firms incorporated in their territory or subject to their jurisdiction to exercise vigilance when doing business with entities incorporated in the Libyan Arab Jamahiriya or subject to its jurisdiction, and any individuals or entities acting on their behalf or at their direction, and entities owned or controlled by them, if the States have information that provides reasonable grounds to believe that such business could contribute to violence and use of force against civilians; Designations
22. *Decides* that the individuals listed in Annex I shall be subject to the travel restrictions imposed in paragraphs 15 and 16 of resolution 1970 (2011), and decides further that the individuals and entities listed in Annex II shall be subject to the asset freeze imposed in paragraphs 17, 19, 20 and 21 of resolution 1970 (2011);
23. *Decides* that the measures specified in paragraphs 15, 16, 17, 19, 20 and 21 of resolution 1970 (2011) shall apply also to individuals and entities determined by the Council or the Committee to have violated the provisions of resolution 1970 (2011), particularly paragraphs 9 and 10 thereof, or to have assisted others in doing so;

#### **Panel of Experts**

24. *Requests* the Secretary-General to create for an initial period of one year, in consultation with the Committee, a group of up to eight experts (“Panel of Experts”), under the direction of the Committee to carry out the following tasks:
  - (a) Assist the Committee in carrying out its mandate as specified in paragraph 24 of resolution 1970 (2011) and this resolution;



- (b) Gather, examine and analyse information from States, relevant United Nations bodies, regional organisations and other interested parties regarding the implementation of the measures decided in resolution 1970 (2011) and this resolution, in particular incidents of non-compliance;
  - (c) Make recommendations on actions the Council, or the Committee or State, may consider to improve implementation of the relevant measures;
  - (d) Provide to the Council an interim report on its work no later than 90 days after the Panel's appointment, and a final report to the Council no later than 30 days prior to the termination of its mandate with its findings and recommendations;
25. *Urges* all States, relevant United Nations bodies and other interested parties, to cooperate fully with the Committee and the Panel of Experts, in particular by supplying any information at their disposal on the implementation of the measures decided in resolution 1970 (2011) and this resolution, in particular incidents of non-compliance;
26. *Decides* that the mandate of the Committee as set out in paragraph 24 of resolution 1970 (2011) shall also apply to the measures decided in this resolution;
27. *Decides* that all States, including the Libyan Arab Jamahiriya, shall take the necessary measures to ensure that no claim shall lie at the instance of the Libyan authorities, or of any person or body in the Libyan Arab Jamahiriya, or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Security Council in resolution 1970 (2011), this resolution and related resolutions;
28. *Reaffirms* its intention to keep the actions of the Libyan authorities under continuous review and underlines its readiness to review at any time the measures imposed by this resolution and resolution 1970 (2011), including by strengthening, suspending or lifting those measures, as appropriate, based on compliance by the Libyan authorities with this resolution and resolution 1970 (2011).
29. *Decides* to remain actively seized of the matter.

# Membership in the United Nations

## Current Members of the United Nations

Original Members are listed in **bold**. There were 51 original members.<sup>1</sup> Today 193 States are members of UN.

<b>Member State</b>	<b>Date of admission</b>
Afghanistan	19 <sup>th</sup> November 1946
Albania	14 <sup>th</sup> December 1955
Algeria	8 <sup>th</sup> October 1962
Andorra	28 <sup>th</sup> July 1993
Angola	1 <sup>st</sup> December 1976
Antigua and Barbuda	11 <sup>th</sup> November 1981
<b>Argentina</b>	24 <sup>th</sup> October 1945
Armenia	2 <sup>nd</sup> March 1992
<b>Australia</b>	1 <sup>st</sup> November 1945
Austria	14 <sup>th</sup> December 1955
Azerbaijan	2 <sup>nd</sup> March 1992
Bahamas	18 <sup>th</sup> September 1973
Bahrain	21 <sup>st</sup> September 1971
Bangladesh	17 <sup>th</sup> September 1974
Barbados	9 <sup>th</sup> December 1966
<b>Belarus</b>	24 <sup>th</sup> October 1945
<b>Belgium</b>	27 <sup>th</sup> December 1945
Belize	25 <sup>th</sup> September 1981
Benin	20 <sup>th</sup> September 1960

*Continued on next page*

<sup>1</sup>Former original members: Czechoslovakia and Yugoslavia.

<b>Member State</b>	<b>Date of admission</b>
Bhutan	21 <sup>st</sup> September 1971
<b>Bolivia (Plurinational State of)</b>	14 <sup>th</sup> November 1945
Bosnia and Herzegovina	22 <sup>nd</sup> May 1992
Botswana	17 <sup>th</sup> October 1966
<b>Brazil</b>	24 <sup>th</sup> October 1945
Brunei Darussalam	21 <sup>st</sup> September 1984
Bulgaria	14 <sup>th</sup> December 1955
Burkina Faso	20 <sup>th</sup> September 1960
Burundi	18 <sup>th</sup> September 1962
Cambodia	14 <sup>th</sup> December 1955
Cameroon	20 <sup>th</sup> September 1960
<b>Canada</b>	9 <sup>th</sup> November 1945
Cape Verde	16 <sup>th</sup> September 1975
Central African Republic	20 <sup>th</sup> September 1960
Chad	20 <sup>th</sup> September 1960
<b>Chile</b>	24 <sup>th</sup> October 1945
<b>China</b>	24 <sup>th</sup> October 1945
<b>Colombia</b>	5 <sup>th</sup> November 1945
Comoros	12 <sup>th</sup> November 1975
Congo	20 <sup>th</sup> September 1960
Democratic Republic of the Congo	20 <sup>th</sup> September 1960
<b>Costa Rica</b>	2 <sup>nd</sup> November 1945
Côte d'Ivoire	20 <sup>th</sup> September 1960
Croatia	22 <sup>nd</sup> May 1992
<b>Cuba</b>	24 <sup>th</sup> October 1945
Cyprus	20 <sup>th</sup> September 1960
Czech Republic	19 <sup>th</sup> January 1993
<b>Denmark</b>	24 <sup>th</sup> October 1945
Djibouti	20 <sup>th</sup> September 1977
Dominica	18 <sup>th</sup> December 1978
<b>Dominican Republic</b>	24 <sup>th</sup> October 1945
<b>Ecuador</b>	21 <sup>st</sup> December 1945
<b>Egypt</b>	24 <sup>th</sup> October 1945
<b>El Salvador</b>	24 <sup>th</sup> October 1945
Equatorial Guinea	12 <sup>th</sup> November 1968
Eritrea	28 <sup>th</sup> May 1993

*Continued on next page*

<b>Member State</b>	<b>Date of admission</b>
Estonia	17 <sup>th</sup> September 1991
<b>Ethiopia</b>	13 <sup>th</sup> November 1945
Fiji	13 <sup>th</sup> October 1970
Finland	14 <sup>th</sup> December 1955
<b>France</b>	24 <sup>th</sup> October 1945
Gabon	20 <sup>th</sup> September 1960
Gambia	21 <sup>st</sup> September 1965
Georgia	31 <sup>st</sup> July 1992
Germany	18 <sup>th</sup> September 1973
Ghana	8 <sup>th</sup> March 1957
<b>Greece</b>	25 <sup>th</sup> October 1945
Grenada	17 <sup>th</sup> September 1974
<b>Guatemala</b>	21 <sup>st</sup> November 1945
Guinea	12 <sup>th</sup> December 1958
Guinea-Bissau	17 <sup>th</sup> September 1974
Guyana	20 <sup>th</sup> September 1966
<b>Haiti</b>	24 <sup>th</sup> October 1945
<b>Honduras</b>	17 <sup>th</sup> December 1945
Hungary	14 <sup>th</sup> December 1955
Iceland	19 <sup>th</sup> November 1946
<b>India</b>	30 <sup>th</sup> October 1945
Indonesia	28 <sup>th</sup> September 1950
<b>Iran (Islamic Republic of)</b>	24 <sup>th</sup> October 1945
<b>Iraq</b>	21 <sup>st</sup> December 1945
Ireland	14 <sup>th</sup> December 1955
Israel	11 <sup>th</sup> May 1949
Italy	14 <sup>th</sup> December 1955
Jamaica	18 <sup>th</sup> September 1962
Japan	18 <sup>th</sup> December 1956
Jordan	14 <sup>th</sup> December 1955
Kazakhstan	2 <sup>nd</sup> March 1992
Kenya	16 <sup>th</sup> December 1963
Kiribati	14 <sup>th</sup> September 1999
Democratic People's Republic of Korea	17 <sup>th</sup> September 1991
Republic of Korea	17 <sup>th</sup> September 1991
Kuwait	14 <sup>th</sup> May 1963

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<b>Member State</b>	<b>Date of admission</b>
Kyrgyzstan	2 <sup>nd</sup> March 1992
Lao People's Democratic Republic	14 <sup>th</sup> December 1955
Latvia	17 <sup>th</sup> September 1991
<b>Lebanon</b>	24 <sup>th</sup> October 1945
Lesotho	17 <sup>th</sup> October 1966
<b>Liberia</b>	2 <sup>nd</sup> November 1945
Libya	14 <sup>th</sup> December 1955
Liechtenstein	18 <sup>th</sup> September 1990
Lithuania	17 <sup>th</sup> September 1991
<b>Luxembourg</b>	24 <sup>th</sup> October 1945
The former Yugoslav Republic of Macedonia	8 <sup>th</sup> April 1993
Madagascar	20 <sup>th</sup> September 1960
Malawi	1 <sup>st</sup> December 1964
Malaysia	17 <sup>th</sup> September 1957
Maldives	21 <sup>st</sup> September 1965
Mali	28 <sup>th</sup> September 1960
Malta	1 <sup>st</sup> December 1964
Marshall Islands	17 <sup>th</sup> September 1991
Mauritania	27 <sup>th</sup> October 1961
Mauritius	24 <sup>th</sup> April 1968
<b>Mexico</b>	7 <sup>th</sup> November 1945
Micronesia (Federated States of)	17 <sup>th</sup> September 1991
Republic of Moldova	2 <sup>nd</sup> March 1992
Monaco	28 <sup>th</sup> May 1993
Mongolia	27 <sup>th</sup> October 1961
Montenegro	28 <sup>th</sup> June 2006
Morocco	12 <sup>th</sup> November 1956
Mozambique	16 <sup>th</sup> September 1975
Myanmar	19 <sup>th</sup> April 1948
Namibia	23 <sup>rd</sup> April 1990
Nauru	14 <sup>th</sup> September 1999
Nepal	14 <sup>th</sup> December 1955
<b>Netherlands</b>	10 <sup>th</sup> December 1945
<b>New Zealand</b>	24 <sup>th</sup> October 1945
<b>Nicaragua</b>	24 <sup>th</sup> October 1945
Niger	20 <sup>th</sup> September 1960

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<b>Member State</b>	<b>Date of admission</b>
Nigeria	7 <sup>th</sup> October 1960
<b>Norway</b>	27 <sup>th</sup> November 1945
Oman	7 <sup>th</sup> October 1971
Pakistan	30 <sup>th</sup> September 1947
Palau	15 <sup>th</sup> December 1994
<b>Panama</b>	13 <sup>th</sup> November 1945
Papua New Guinea	10 <sup>th</sup> October 1975
<b>Paraguay</b>	24 <sup>th</sup> October 1945
<b>Peru</b>	31 <sup>st</sup> October 1945
<b>Philippines</b>	24 <sup>th</sup> October 1945
<b>Poland</b> <sup>1</sup>	24 <sup>th</sup> October 1945
Portugal	14 <sup>th</sup> December 1955
Qatar	21 <sup>st</sup> September 1971
Romania	14 <sup>th</sup> December 1955
<b>Russian Federation</b> <sup>2</sup>	24 <sup>th</sup> October 1945
Rwanda	18 <sup>th</sup> September 1962
Saint Kitts and Nevis	23 <sup>rd</sup> September 1983
Saint Lucia	18 <sup>th</sup> September 1979
Saint Vincent and the Grenadines	16 <sup>th</sup> September 1980
Samoa	15 <sup>th</sup> December 1976
San Marino	2 <sup>nd</sup> March 1992
Sao Tome and Principe	16 <sup>th</sup> September 1975
<b>Saudi Arabia</b>	24 <sup>th</sup> October 1945
Senegal	28 <sup>th</sup> September 1960
Serbia	1 <sup>st</sup> November 2000
Seychelles	21 <sup>st</sup> September 1976
Sierra Leone	27 <sup>th</sup> September 1961
Singapore	21 <sup>st</sup> September 1965
Slovakia <sup>3</sup>	19 <sup>th</sup> January 1993
Slovenia	22 <sup>nd</sup> May 1992
Solomon Islands	19 <sup>th</sup> September 1978

*Continued on next page*

<sup>1</sup>Poland could not sign the UN Charter during the San Francisco Conference. However pursuant to Article 110(4) of the UN Charter Poland became the original member of the UN, having signed (and subsequently ratified) the UN charter before its entry into force.

<sup>2</sup>Previously: the Union of Soviet Socialist Republics. See: p. 650, The letter from the The President of the Russian Federation.

<sup>3</sup>Page 70, Resolution 800 of the UN Security Council.

<b>Member State</b>	<b>Date of admission</b>
Somalia	20 <sup>th</sup> September 1960
<b>South Africa</b>	7 <sup>th</sup> November 1945
South Sudan <sup>1</sup>	14 <sup>th</sup> July 2011
Spain	14 <sup>th</sup> December 1955
Sri Lanka	14 <sup>th</sup> December 1955
Sudan	12 <sup>th</sup> November 1956
Suriname	4 <sup>th</sup> December 1975
Swaziland	24 <sup>th</sup> September 1968
Sweden	19 <sup>th</sup> November 1946
Switzerland	10 <sup>th</sup> September 2002
<b>Syrian Arab Republic</b>	24 <sup>th</sup> October 1945
Tajikistan	2 <sup>nd</sup> March 1992
United Republic of Tanzania	14 <sup>th</sup> December 1961
Thailand	16 <sup>th</sup> December 1946
Timor-Leste	27 <sup>th</sup> September 2002
Togo	20 <sup>th</sup> September 1960
Tonga	14 <sup>th</sup> September 1999
Trinidad and Tobago	18 <sup>th</sup> September 1962
Tunisia	12 <sup>th</sup> November 1956
<b>Turkey</b>	24 <sup>th</sup> October 1945
Turkmenistan	2 <sup>nd</sup> March 1992
Tuvalu	5 <sup>th</sup> September 2000
Uganda	25 <sup>th</sup> October 1962
<b>Ukraine</b>	24 <sup>th</sup> October 1945
United Arab Emirates	9 <sup>th</sup> December 1971
<b>United Kingdom of Great Britain and Northern Ireland</b>	24 <sup>th</sup> October 1945
<b>United States of America</b>	24 <sup>th</sup> October 1945
<b>Uruguay</b>	18 <sup>th</sup> December 1945
Uzbekistan	2 <sup>nd</sup> March 1992
Vanuatu	15 <sup>th</sup> September 1981
<b>Venezuela (Bolivarian Republic of)</b>	15 <sup>th</sup> November 1945
Viet Nam	20 <sup>th</sup> September 1977
Yemen	30 <sup>th</sup> September 1947
Zambia	1 <sup>st</sup> December 1964
Zimbabwe	25 <sup>th</sup> August 1980

<sup>1</sup>Page 70, Resolution 1999 of the Security Council of U.N.

## **Examples of acts on membership in the United Nations**

### **Resolution 800 of the UN Security Council on membership of Slovakia**

Adopted by the Security Council at its 3157<sup>th</sup> meeting, on 8 January 1993

The Security Council,

Having examined the application of the Slovak Republic for admission to the United Nations,

Recommends to the General Assembly that the Slovak Republic be admitted to membership in the United Nations.

### **Resolution 2758 (XXVI) of the UN General Assembly on representation of China**

*The General Assembly,*

*Recalling* the principles of the Charter of the United Nations,

*Considering* that the restoration of the lawful rights of the People's Republic of China is essential both for the protection of the Charter of the United Nations and for the cause that the United Nations must serve under the Charter,

*Recognizing* that the representatives of the Government of the People's Republic of China are the only lawful representatives of China to the United Nations and that the People's Republic of China is one of the five permanent members of the Security Council,

*Decides* to restore all its rights to the People's Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it.

1976<sup>th</sup> plenary meeting,  
25 October 1971.

### **Resolution 1999 of the UN Security Council on membership of South Sudan**

Adopted by the Security Council at its 6582<sup>nd</sup> meeting, on 13 July 2011

The Security Council,

Having examined the application of the Republic of South Sudan for admission to the United Nations,

Recommends to the General Assembly that the Republic of South Sudan be admitted to membership in the United Nations.

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## **Non-membership in the United Nations**

### **Resolution 3237 (XXIX) of the UN General Assembly. Observer status of the Palestine Liberation Organization**

*The General Assembly,*

*Having considered* the question of Palestine,

*Taking into consideration* the universality of the United Nations prescribed in the Charter,

*Recalling* its resolution 3102 (XXVIII) of 12 December 1973,

*Taking into account* Economic and Social Council resolutions 1835 (LVI) of 14 May 1974 and 1840 (LVI) of 15 May 1974,

*Noting* that the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, the World Population Conference and the World Food Conference have in effect invited the Palestine Liberation Organization to participate in their respective deliberations,

*Noting also* that the Third United Nations Conference on the Law of the Sea has invited the Palestine Liberation Organization to participate in its deliberations as an observer,

1. *Invites* the Palestine Liberation Organization to participate in the sessions and the work of the General Assembly in the capacity of observer;
2. *Invites* the Palestine Liberation Organization to participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly in the capacity of observer;
3. *Considers* that the Palestine Liberation Organization is entitled to participate as an observer in the sessions and the work of all international conferences convened under the auspices of other organs of the United Nations;
4. *Requests* the Secretary-General to take the necessary steps for the implementation of the present resolution.

2296<sup>th</sup> plenary meeting  
22 November 1974

### **Resolution 52/250 of the UN General Assembly. Observer status of the Palestine Liberation Organization**

*The General Assembly,*

*Recalling* its resolution 181 (II) of 29 November 1947, in which, inter alia, it recommended the partition of Palestine into a Jewish State and an Arab State, with Jerusalem as a corpus separatum,

*Recalling also* its resolution 3237 (XXIX) of 22 November 1974<sup>1</sup>, by which it granted observer status to the Palestine Liberation Organization,

*Recalling further* its resolution 43/160 A of 9 December 1988, adopted under the item entitled “Observer status of national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States”, in which it decided that the Palestine Liberation Organization was entitled to have its communications issued and circulated as official documents of the United Nations,

*Recalling* its resolution 43/177 of 15 December 1988, in which it acknowledged the proclamation of the State of Palestine by the Palestine National Council on 15 November 1988 and decided that the designation “Palestine” should be used in place of the designation “Palestine Liberation Organization” in the United Nations system,

*Recalling also* its resolutions 49/12 A of 9 November 1994 and 49/12 B of 24 May 1995, through which, inter alia, arrangements for the special commemorative meeting of the General Assembly on the occasion of the fiftieth anniversary of the United Nations, in addition to applying to all Member and observer States, were also applied to Palestine, in its capacity as observer, including in the organizing process of the list of speakers for the commemorative meeting,

*Recalling further* that Palestine enjoys full membership in the Group of Asian States and the Economic and Social Commission for Western Asia,

*Aware* that Palestine is a full member of the League of Arab States, the Movement of Non-Aligned Countries, the Organization of the Islamic Conference, and the Group of 77 and China,

*Aware also* that general democratic Palestinian elections were held on 20 January 1996 and that the Palestinian Authority was established on part of the occupied Palestinian territory,

*Desirous* of contributing to the achievement of the inalienable rights of the Palestinian people, thus attaining a just and comprehensive peace in the Middle East,

1. *Decides* to confer upon Palestine, in its capacity as observer, and as contained in the annex to the present resolution, additional rights and privileges of participation in the sessions and work of the General Assembly and the international conferences convened under the auspices of the Assembly or other organs of the United Nations, as well as in United Nations conferences;

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<sup>1</sup>See: p. 71.

2. *Requests* the Secretary-General to inform the General Assembly, within the current session, about the implementation of the modalities annexed to the present resolution.

89<sup>th</sup> plenary meeting  
7 July 1998

## ANNEX

The additional rights and privileges of participation of Palestine shall be effected through the following modalities, without prejudice to the existing rights and privileges:

1. The right to participate in the general debate of the General Assembly.
2. Without prejudice to the priority of Member States, Palestine shall have the right of inscription on the list of speakers under agenda items other than Palestinian and Middle East issues at any plenary meeting of the General Assembly, after the last Member State inscribed on the list of that meeting.
3. The right of reply.
4. The right to raise points of order related to the proceedings on Palestinian and Middle East issues, provided that the right to raise such a point of order shall not include the right to challenge the decision of the presiding officer.
5. The right to co-sponsor draft resolutions and decisions on Palestinian and Middle East issues. Such draft resolutions and decisions shall be put to a vote only upon request from a Member State.
6. The right to make interventions, with a precursory explanation or the recall of relevant General Assembly resolutions being made only once by the President of the General Assembly at the start of each session of the Assembly.
7. Seating for Palestine shall be arranged immediately after non-member States and before the other observers; and with the allocation of six seats in the General Assembly Hall.
8. Palestine shall not have the right to vote or to put forward candidates.

### **Resolution 67/19 of the UN General Assembly on status of Palestine in the United Nations**

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations, and stressing in this regard the principle of equal rights and self-determination of peoples,

*Recalling* its resolution 2625 (XXV) of 24 October 1970<sup>1</sup>, by which it affirmed, inter alia, the duty of every State to promote through joint and separate action the realization of the principle of equal rights and self-determination of peoples,

*Stressing* the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights,

*Recalling* its resolution 181 (II) of 29 November 1947,

*Reaffirming* the principle, set out in the Charter, of the inadmissibility of the acquisition of territory by force,

*Reaffirming also* relevant Security Council resolutions, including, inter alia, resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 446 (1979) of 22 March 1979, 478 (1980) of 20 August 1980, 1397 (2002) of 12 March 2002, 1515 (2003) of 19 November 2003 and 1850 (2008) of 16 December 2008,

*Reaffirming further* the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, including, inter alia, with regard to the matter of prisoners,

*Reaffirming* its resolution 3236 (XXIX) of 22 November 1974 and all relevant resolutions, including resolution 66/146 of 19 December 2011, reaffirming the right of the Palestinian people to self-determination, including the right to their independent State of Palestine,

*Reaffirming also* its resolutions 43/176 of 15 December 1988 and 66/17 of 30 November 2011 and all relevant resolutions regarding the Peaceful settlement of the question of Palestine, which, inter alia, stress the need for the withdrawal of Israel from the Palestinian territory occupied since 1967, including East Jerusalem, the realization of the inalienable rights of the Palestinian people, primarily the right to self-determination and the right to their independent State, a just resolution of the problem of the Palestine refugees in conformity with resolution 194 (III) of 11 December 1948 and the complete cessation of all Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem,

*Reaffirming further* its resolution 66/18 of 30 November 2011 and all relevant resolutions regarding the status of Jerusalem, bearing in mind that the annexation of East Jerusalem is not recognized by the international community, and emphasizing the need for a way to be found through negotiations to resolve the status of Jerusalem as the capital of two States,

*Recalling* the advisory opinion of the International Court of Justice of 9 July 2004,

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<sup>1</sup>See: p. 39.

*Reaffirming* its resolution 58/292 of 6 May 2004, affirming, inter alia, that the status of the Palestinian territory occupied since 1967, including East Jerusalem, remains one of military occupation and that, in accordance with international law and relevant United Nations resolutions, the Palestinian people have the right to self-determination and to sovereignty over their territory,

*Recalling* its resolutions 3210 (XXIX) of 14 October 1974 and 3237 (XXIX) of 22 November 1974<sup>1</sup>, by which, respectively, the Palestine Liberation Organization was invited to participate in the deliberations of the General Assembly as the representative of the Palestinian people and was granted observer status,

*Recalling also* its resolution 43/177 of 15 December 1988, by which it, inter alia, acknowledged the proclamation of the State of Palestine by the Palestine National Council on 15 November 1988 and decided that the designation “Palestine” should be used in place of the designation “Palestine Liberation Organization” in the United Nations system, without prejudice to the observer status and functions of the Palestine Liberation Organization within the United Nations system,

*Taking into consideration* that the Executive Committee of the Palestine Liberation Organization, in accordance with a decision by the Palestine National Council, is entrusted with the powers and responsibilities of the Provisional Government of the State of Palestine,

*Recalling* its resolution 52/250 of 7 July 1998<sup>2</sup>, by which additional rights and privileges were accorded to Palestine in its capacity as observer,

*Recalling also* the Arab Peace Initiative adopted in March 2002 by the Council of the League of Arab States,

*Reaffirming* its commitment, in accordance with international law, to the two-State solution of an independent, sovereign, democratic, viable and contiguous State of Palestine living side by side with Israel in peace and security on the basis of the pre-1967 borders,

*Bearing in mind* the mutual recognition of 9 September 1993 between the Government of the State of Israel and the Palestine Liberation Organization, the representative of the Palestinian people,

*Affirming* the right of all States in the region to live in peace within secure and internationally recognized borders,

*Commending* the Palestinian National Authority’s 2009 plan for constructing the institutions of an independent Palestinian State within a two-year period, and welcoming the positive assessments in this regard about readiness for statehood

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<sup>1</sup>See: p. 71.

<sup>2</sup>See: p. 71.

by the World Bank, the United Nations and the International Monetary Fund and as reflected in the Ad Hoc Liaison Committee Chair conclusions of April 2011 and subsequent Chair conclusions, which determined that the Palestinian Authority is above the threshold for a functioning State in key sectors studied,

*Recognizing* that full membership is enjoyed by Palestine in the United Nations Educational, Scientific and Cultural Organization, the Economic and Social Commission for Western Asia and the Group of Asia-Pacific States and that Palestine is also a full member of the League of Arab States, the Movement of Non-Aligned Countries, the Organization of Islamic Cooperation and the Group of 77 and China,

*Recognizing also* that, to date, 132 States Members of the United Nations have accorded recognition to the State of Palestine,

*Taking note* of the 11 November 2011 report of the Security Council Committee on the Admission of New Members,

*Stressing* the permanent responsibility of the United Nations towards the question of Palestine until it is satisfactorily resolved in all its aspects,

*Reaffirming* the principle of universality of membership of the United Nations,

1. *Reaffirms* the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967;
2. *Decides* to accord to Palestine non-member observer State status in the United Nations, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestinian people, in accordance with the relevant resolutions and practice;
3. *Expresses the hope* that the Security Council will consider favourably the application submitted on 23 September 2011 by the State of Palestine for admission to full membership in the United Nations;
4. *Affirms* its determination to contribute to the achievement of the inalienable rights of the Palestinian people and the attainment of a peaceful settlement in the Middle East that ends the occupation that began in 1967 and fulfils the vision of two States: an independent, sovereign, democratic, contiguous and viable State of Palestine living side by side in peace and security with Israel on the basis of the pre-1967 borders;
5. *Expresses the urgent need* for the resumption and acceleration of negotiations within the Middle East peace process based on the relevant United Nations resolutions, the terms of reference of the Madrid Conference, including the principle of land for peace, the Arab Peace Initiative<sup>5</sup> and the Quartet road map to a perman-

ent two-State solution to the Israeli-Palestinian conflict<sup>9</sup> for the achievement of a just, lasting and comprehensive peace settlement between the Palestinian and Israeli sides that resolves all outstanding core issues, namely the Palestine refugees, Jerusalem, settlements, borders, security and water;

6. *Urges* all States, the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination, independence and freedom;
7. *Requests* the Secretary-General to take the necessary measures to implement the present resolution and to report to the Assembly within three months on progress made in this regard.

29 November 2012

### **Resolution 58/314 of the UN General Assembly on Participation of the Holy See in the work the United Nations**

*The General Assembly,*

*The General Assembly,*

*Recalling* that the Holy See became a Permanent Observer State at the United Nations on 6 April 1964, and since then has always been invited to participate in the meetings of all the sessions of the General Assembly,

*Recalling also* that the Holy See is a party to diverse international instruments, including the Vienna Convention on Diplomatic Relations, the Vienna Convention on the Law of Treaties, the Convention relating to the Status of Refugees and the Protocol thereto, the Convention on the Rights of the Child and the Optional Protocols thereto, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention for the Protection of Cultural Property in the Event of Armed Conflict, the Paris Convention for the Protection of Industrial Property, the Treaty on the Non- Proliferation of Nuclear Weapons, the main disarmament treaties and the Geneva Conventions and the Additional Protocols thereto,

*Recalling further* that the Holy See enjoys membership in various United Nations subsidiary bodies, specialized agencies and international intergovernmental organizations, including the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, the United Nations Conference on Trade and Development, the World Intellectual Property Organization, the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons, the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization and the International Committee of Military Medicine,

*Aware* that the Holy See actively participates as an observer in many of the specialized agencies, such as the Food and Agriculture Organization of the United Nations, the International Labour Organization, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the United Nations Industrial Development Organization, the International Fund for Agricultural Development and the World Tourism Organization, as well as in the World Trade Organization, that it is a full member of the Organization for Security and Cooperation in Europe and a Guest of Honour in its Parliamentary Assembly, and that it participates as an observer in various other regional intergovernmental organizations, including the Council of Europe, the Organization of American States and the African Union, and is regularly invited to take part in the main meetings of the Asian-African Legal Consultative Organization,

*Aware also* that the Economic and Social Council, by its decision 244 (LXIII) of 22 July 1977, recommended that the Holy See attend sessions of the regional commissions on a basis similar to that provided for in the relevant terms of reference applicable to States Members of the United Nations not members of the regional commissions,

*Recalling* that the Holy See contributes financially to the general administration of the United Nations in accordance with the rate of assessment for the Holy See as a non-member State, as adopted by the General Assembly in its resolution 58/1 B of 23 December 2003,

*Considering* that it is in the interest of the United Nations that all States be invited to participate in its work,

*Desirous* of contributing to the appropriate participation of the Holy See in the work of the General Assembly in the context of the revitalization of the work of the Assembly,

1. *Acknowledges* that the Holy See, in its capacity as an Observer State, shall be accorded the rights and privileges of participation in the sessions and work of the General Assembly and the international conferences convened under the auspices of the Assembly or other organs of the United Nations, as well as in United Nations conferences as set out in the annex to the present resolution;
2. *Requests* the Secretary-General to inform the General Assembly during the current session about the implementation of the modalities annexed to the present resolution.



## Annex

The rights and privileges of participation of the Holy See shall be effected through the following modalities, without prejudice to the existing rights and privileges:

1. The right to participate in the general debate of the General Assembly;
2. Without prejudice to the priority of Member States, the Holy See shall have the right of inscription on the list of speakers under agenda items at any plenary meeting of the General Assembly, after the last Member State inscribed on the list;
3. The right to make interventions, with a precursory explanation or the recall of relevant General Assembly resolutions being made only once by the President of the General Assembly at the start of each session of the Assembly;
4. The right of reply;
5. The right to have its communications relating to the sessions and work of the General Assembly issued and circulated directly, and without intermediary, as official documents of the Assembly;
6. The right to have its communications relating to the sessions and work of all international conferences convened under the auspices of the General Assembly issued and circulated directly, and without intermediary, as official documents of those conferences;
7. The right to raise points of order relating to any proceedings involving the Holy See, provided that the right to raise such a point of order shall not include the right to challenge the decision of the presiding officer;
8. The right to co-sponsor draft resolutions and decisions that make reference to the Holy See; such draft resolutions and decisions shall be put to a vote only upon request from a Member State;
9. Seating for the Holy See shall be arranged immediately after Member States and before the other observers when it participates as a non-member State observer, with the allocation of six seats in the General Assembly Hall;
10. The Holy See shall not have the right to vote or to put forward candidates in the General Assembly.

# Statute of the International Court of Justice<sup>1</sup>

## Article 1

The International Court of Justice established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

## Chapter I Organization of The Court

### Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

### Article 3

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.
2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

### Article 4

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

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<sup>1</sup>According to article 92 of the UN Charter, this Statute “forms an integral part” of the UN Charter. See p. 31.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.
3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

#### **Article 5**

1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.
2. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

#### **Article 6**

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

#### **Article 7**

1. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible.
2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

#### **Article 8**

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

**Article 9**

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

**Article 10**

1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.
2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.
3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

**Article 11**

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

**Article 12**

1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.
2. If the joint conference is unanimously agreed upon any person who fulfills the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.
3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.
4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

**Article 13**

1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.
2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.
3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.
4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

**Article 14**

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

**Article 15**

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

**Article 16**

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.
2. Any doubt on this point shall be settled by the decision of the Court.

**Article 17**

1. No member of the Court may act as agent, counsel, or advocate in any case.
2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.
3. Any doubt on this point shall be settled by the decision of the Court.

**Article 18**

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfill the required conditions.
2. Formal notification thereof shall be made to the Secretary-General by the Registrar.
3. This notification makes the place vacant.

**Article 19**

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

**Article 20**

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

**Article 21**

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.
2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

**Article 22**

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.
2. The President and the Registrar shall reside at the seat of the Court.

**Article 23**

1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.
2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.
3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

**Article 24**

1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.
2. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.
3. If in any such case the member Court and the President disagree, the matter shall be settled by the decision of the Court.

**Article 25**

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.
2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.
3. A quorum of nine judges shall suffice to constitute the Court.

**Article 26**

1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications.
2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.
3. Cases shall be heard and determined by the chambers provided for in this article if the parties so request.

**Article 27**

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

**Article 28**

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

**Article 29**

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

**Article 30**

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.
2. The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

**Article 31**

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.
2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.
3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.
4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.
5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.
6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfill the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.



**Article 32**

1. Each member of the Court shall receive an annual salary.
2. The President shall receive a special annual allowance.
3. The Vice-President shall receive a special allowance for every day on which he acts as President.
4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.
5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.
6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.
7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.
8. The above salaries, allowances, and compensation shall be free of all taxation.

**Article 33**

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

## **Chapter II Competence of The Court**

**Article 34**

1. Only states may be parties in cases before the Court.
2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.
3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

**Article 35**

1. The Court shall be open to the states parties to the present Statute.
2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.
3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court

**Article 36**

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.
2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
  - a. the interpretation of a treaty;
  - b. any question of international law;
  - c. the existence of any fact which, if established, would constitute a breach of an international obligation;
  - d. the nature or extent of the reparation to be made for the breach of an international obligation.
3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.
4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.
5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.
6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

**Article 37**

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

**Article 38**

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
  - a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
  - b. international custom, as evidence of a general practice accepted as law;
  - c. the general principles of law recognized by civilized nations;
  - d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

## Chapter III Procedure

**Article 39**

1. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.
2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.
3. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

**Article 40**

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

2. The Registrar shall forthwith communicate the application to all concerned.
3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.

#### **Article 41**

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.
2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

#### **Article 42**

1. The parties shall be represented by agents.
2. They may have the assistance of counsel or advocates before the Court.
3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

#### **Article 43**

1. The procedure shall consist of two parts: written and oral.
2. The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.
3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.
4. A certified copy of every document produced by one party shall be communicated to the other party.
5. The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates.

#### **Article 44**

1. For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the state upon whose territory the notice has to be served.
2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

**Article 45**

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

**Article 46**

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted .

**Article 47**

1. Minutes shall be made at each hearing and signed by the Registrar and the President.
2. These minutes alone shall be authentic.

**Article 48**

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

**Article 49**

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

**Article 50**

The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

**Article 51**

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

**Article 52**

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

**Article 53**

1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim.
2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

**Article 54**

1. When, subject to the control of the Court, the agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed.
2. The Court shall withdraw to consider the judgment.
3. The deliberations of the Court shall take place in private and remain secret.

**Article 55**

1. All questions shall be decided by a majority of the judges present.
2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

**Article 56**

1. The judgment shall state the reasons on which it is based.
2. It shall contain the names of the judges who have taken part in the decision.

**Article 57**

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

**Article 58**

The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the agents.

**Article 59**

The decision of the Court has no binding force except between the parties and in respect of that particular case.

**Article 60**

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

**Article 61**

1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.
2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.
3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.
4. The application for revision must be made at latest within six months of the discovery of the new fact.
5. No application for revision may be made after the lapse of ten years from the date of the judgment.

**Article 62**

1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.
2. It shall be for the Court to decide upon this request.

**Article 63**

1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.
2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

**Article 64**

Unless otherwise decided by the Court, each party shall bear its own costs.

## Chapter IV Advisory Opinions

### Article 65

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.
2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

### Article 66

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.
2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.
3. Should any such state entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such state may express a desire to submit a written statement or to be heard; and the Court will decide.
4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other states or organizations in the form, to the extent, and within the time-limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to states and organizations having submitted similar statements.

### Article 67

The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned.



**Article 68**

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

## **Chapter V Amendment**

**Article 69**

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of states which are parties to the present Statute but are not Members of the United Nations.

**Article 70**

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.

# Convention for the Pacific Settlement of International Disputes (Hague I) (1899)

His Majesty the Emperor of Germany, King of Prussia; [etc.]:

Animated by a strong desire to concert for the maintenance of the general peace;

Resolved to second by their best efforts the friendly settlement of international disputes;

Recognizing the solidarity which unites the members of the society of civilized nations;

Desirous of extending the empire of law, and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a Court of Arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of arbitral procedure;

Sharing the opinion of the august Initiator of the International Peace Conference that it is expedient to record in an international Agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

Being desirous of concluding a Convention to this effect, have appointed as their plenipotentiaries, to wit:

*[List of plenipotentiaries.]*

Who, after communication of their full powers, found in good and due form, have agreed on the following provisions:

## **TITLE I. ON THE MAINTENANCE OF THE GENERAL PEACE**

### **Article 1**

With a view to obviating, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to insure the pacific settlement of international differences.

## **TITLE II. ON GOOD OFFICES AND MEDIATION**

### **Article 2**

In case of serious disagreement or conflict, before an appeal to arms, the Signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

### **Article 3**

Independently of this recourse, the Signatory Powers recommend that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act.

### **Article 4**

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

### **Article 5**

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

### **Article 6**

Good offices and mediation, either at the request of the parties at variance, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

**Article 7**

The acceptance of mediation can not, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If mediation, occurs after the commencement of hostilities it causes no interruption to the military operations in progress, unless there be an agreement to the contrary.

**Article 8**

The Signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to whom they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, who must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

### **TITLE III. ON INTERNATIONAL COMMISSIONS OF INQUIRY**

**Article 9**

In differences of an international nature involving neither honor nor vital interests, and arising from a difference of opinion on points of fact, the Signatory Powers recommend that the parties, who have not been able to come to an agreement by means of diplomacy, should as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation.

**Article 10**

The International Commissions of Inquiry are constituted by special agreement between the parties in conflict.

The Convention for an inquiry defines the facts to be examined and the extent of the Commissioners' powers.

It settles the procedure.

On the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the inquiry Convention, are decided by the Commission itself.

#### **Article 11**

The International Commissions of Inquiry are formed, unless otherwise stipulated, in the manner fixed by Article 32 of the present convention.

#### **Article 12**

The powers in dispute engage to supply the International Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to be completely acquainted with and to accurately understand the facts in question.

#### **Article 13**

The International Commission of Inquiry communicates its Report to the conflicting Powers, signed by all the members of the Commission.

#### **Article 14**

The report of the International Commission of Inquiry is limited to a statement of facts, and has in no way the character of an Arbitral Award. It leaves the conflicting Powers entire freedom as to the effect to be given to this statement.

## **TITLE IV. ON INTERNATIONAL ARBITRATION**

### **CHAPTER I. On the System of Arbitration**

#### **Article 15**

International arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law.

#### **Article 16**

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Signatory Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

**Article 17**

The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

**Article 18**

The Arbitration Convention implies the engagement to submit loyally to the Award.

**Article 19**

Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present Act or later, new Agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

## **CHAPTER II. On the Permanent Court of Arbitration**

**Article 20**

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Signatory Powers undertake to organize a permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the Rules of Procedure inserted in the present Convention.

**Article 21**

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special Tribunal.

**Article 22**

An International Bureau, established at The Hague, serves as record office for the Court.

This Bureau is the channel for communications relative to the meetings of the Court. It has the custody of the archives and conducts all the administrative business.

The Signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them, and of any award concerning them delivered by special Tribunals.

They undertake also to communicate to the Bureau the Laws, Regulations, and documents eventually showing the execution of the awards given by the Court.

**Article 23**

Within the three months following its ratification of the present Act, each Signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrators. The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified by the Bureau to all the Signatory Powers.

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Signatory Powers.

Two or more Powers may agree on the selection in common of one or more Members. The same person can be selected by different Powers.

The Members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place shall be filled in accordance with the method of his appointment.

**Article 24**

When the Signatory Powers desire to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the Arbitrators called upon to form the competent Tribunal to decide this difference, must be chosen from the general list of members of the Court.

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued:

Each party appoints two Arbitrators, and these together choose an Umpire.

If the votes are equal, the choice of the Umpire is intrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

The Tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court and the names of the Arbitrators.

The Tribunal of Arbitration assembles on the date fixed by the parties.

The Members of the Court, in the discharge of their duties and out of their own country, enjoy diplomatic privileges and immunities.

**Article 25**

The Tribunal of Arbitration has its ordinary seat at The Hague.

Except in cases of necessity, the place of session can only be altered by the Tribunal with the assent of the parties.

**Article 26**

The International Bureau at The Hague is authorized to place its premises and its staff at the disposal of the Signatory Powers for the operations of any special Board of Arbitration.

The jurisdiction of the Permanent Court, may, within the conditions laid down in the Regulations, be extended to disputes between non-Signatory Powers, or between Signatory Powers and non-Signatory Powers, if the parties are agreed on recourse to this Tribunal.

**Article 27**

The Signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the conflicting parties of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

**Article 28**

A Permanent Administrative Council, composed of the Diplomatic Representatives of the Signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as President, shall be instituted in this town as soon as possible after the ratification of the present Act by at least nine Powers.

This Council will be charged with the establishment and organization of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its Rules of Procedure and all other necessary Regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension or dismissal of the officials and employ s of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the Signatory Powers without delay the Regulations adopted by it. It furnishes them with an annual Report on the labours of the Court, the working of the administration, and the expenses.



**Article 29**

The expenses of the Bureau shall be borne by the Signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

### **CHAPTER III. On Arbitral Procedure**

**Article 30**

With a view to encourage the development of arbitration, the Signatory Powers have agreed on the following Rules which shall be applicable to arbitral procedure, unless other rules have been agreed on by the parties.

**Article 31**

The Powers who have recourse to arbitration sign a special Act (compromis), in which the subject of the difference is clearly defined, as well as the extent of the Arbitrators' powers. This Act implies the undertaking of the parties to submit loyally to the award.

**Article 32**

The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen by them from the members of the permanent Court of Arbitration established by the present Act. Failing the constitution of the Tribunal by direct agreement between the parties, the following course shall be pursued:

Each party appoints two arbitrators, and these latter together choose an Umpire.

In case of equal voting, the choice of the Umpire is instructed to a third Power, selected by the parties by common accord.

If no agreement is arrived at on this subject, each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

**Article 33**

When a Sovereign or the Chief of a State is chosen as Arbitrator, the arbitral procedure is settled by him.

**Article 34**

The Umpire is by right President of the Tribunal.

When the Tribunal does not include an Umpire it appoints its own President.

**Article 35**

In case of the death, retirement, or disability from any cause of one of the Arbitrators, his place shall be filled in accordance with the method of his appointment.

**Article 36**

The Tribunal's place of session is selected by the parties. Failing this selection the Tribunal sits at The Hague. The place thus fixed cannot, except in case of necessity, be changed by the Tribunal without the assent of the parties.

**Article 37**

The parties have the right to appoint delegates or special agents to attend the Tribunal, for the purpose of serving as intermediaries between them and the Tribunal.

They are further authorized to retain, for the defense of their rights and interests before the Tribunal, counsel or advocates appointed by them for this purpose.

**Article 38**

The Tribunal decides on the choice of languages to be used by itself, and to be authorized for use before it.

**Article 39**

As a general rule the arbitral procedure comprises two distinct phases: preliminary examination and discussion.

Preliminary examination consists in the communication by the respective agents to the members of the Tribunal and to the opposite party of all printed or written Acts and of all documents containing the arguments invoked in the case. This communication shall be made in the form and within the periods fixed by the Tribunal in accordance with Article 49.

Discussion consists in the oral development before the Tribunal of the arguments of the parties.

**Article 40**

Every document produced by one party must be communicated to the other party.

**Article 41**

The discussions are under the direction of the President.

They are only public if it be so decided by the Tribunal, with the assent of the parties.

They are recorded in the proces-verbaux drawn up by the Secretaries appointed by the President. These proces-verbaux alone have an authentic character.

**Article 42**

When the preliminary examination is concluded, the Tribunal has the right to refuse discussion of all fresh Acts or documents which one party may desire to submit to it without the consent of the other party.

**Article 43**

The Tribunal is free to take into consideration fresh Acts or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the Tribunal has the right to require the production of these Acts or documents, but is obliged to make them known to the opposite party.

**Article 44**

The Tribunal can, besides, require from the agents of the parties the production of all Acts, and can demand all necessary explanations. In case of refusal, the Tribunal takes note of it.

**Article 45**

The agents and counsel of the parties are authorized to present orally to the Tribunal all the arguments they may think expedient in defence of their case.

**Article 46**

They have the right to raise objections and points. The decisions of the Tribunal on those points are final, and can not form the subject of any subsequent discussion.

**Article 47**

The members of the Tribunal have the right to put questions to the agents and counsel of the parties, and to demand explanations from them on doubtful points.

Neither the questions put nor the remarks made by members of the Tribunal during the discussions can be regarded as an expression of opinion by the Tribunal in general, or by its members in particular.

**Article 48**

The Tribunal is authorized to declare its competence in interpreting the compromis as well as the other Treaties which may be invoked in the case, and in applying the principles of international law.

**Article 49**

The Tribunal has the right to issue Rules of Procedure for the conduct of the case, to decide the forms and periods within which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

**Article 50**

When the agents and counsel of the parties have submitted all explanations and evidence in support of their case, the President pronounces the discussion closed.

**Article 51**

The deliberations of the Tribunal take place in private. Every decision is taken by a majority of members of the Tribunal.

The refusal of a member to vote must be recorded in the procès-verbal.

**Article 52**

The award, given by a majority of votes, is accompanied by a statement of reasons. It is drawn up in writing and signed by each member of the Tribunal.

Those members who are in the minority may record their dissent when signing.

**Article 53**

The award is read out at a public meeting of the Tribunal, the agents and counsel of the parties being present, or duly summoned to attend.

**Article 54**

The award, duly pronounced and notified to the agents of the parties at variance, puts an end to the dispute definitively and without appeal.

**Article 55**

The parties can reserve in the compromis the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence on the award, and which, at the time the discussion was closed, was unknown to the Tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact, recognizing in it the character described in the foregoing paragraph, and declaring the demand admissible on this ground.

The compromis fixes the period within which the demand for revision must be made.

#### **Article 56**

The award is only binding on the parties who concluded the compromis.

When there is a question of interpreting a Convention to which Powers other than those concerned in the dispute are parties, the latter notify to the former the compromis they have concluded. Each of these Powers has the right to intervene in the case. If one or more of them avail themselves of this right, the interpretation contained in the award is equally binding on them.

#### **Article 57**

Each party pays its own expenses and an equal share of those of the Tribunal. General provisions

#### **Article 58**

The present Convention shall be ratified as speedily as possible. The ratifications shall be deposited at The Hague.

A procès-verbal shall be drawn up recording the receipt of each ratification, and a copy duly certified shall be sent, through the diplomatic channel, to all the Powers who were represented at the International Peace Conference at The Hague.

#### **Article 59**

The non-Signatory Powers who were represented at the International Peace Conference can adhere to the present Convention. For this purpose they must make known their adhesion to the Contracting Powers by a written notification addressed to the Netherlands Government, and communicated by it to all the other Contracting Powers.

#### **Article 60**

The conditions on which the Powers who were not represented at the International Peace Conference can adhere to the present Convention shall form the subject of a subsequent Agreement among the Contracting Powers.

#### **Article 61**

In the event of one of the High Contracting Parties denouncing the present Convention, this denunciation would not take effect until a year after its notification made in writing to the Netherlands Government, and by it communicated at once to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the Plenipotentiaries have signed the present Convention and affixed their seals to it.

Done at The Hague, the 29th July, 1899, in a single copy, which shall remain in the archives of the Netherlands Government, and copies of it, duly certified, be sent through the diplomatic channel to the Contracting Powers.

## RESERVATIONS

### United States

Under reservation of the declaration made at the plenary sitting of the Conference on the 25th of July, 1899. Extract from the procès-verbal:

Nothing contained in this convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign state; nor shall anything contained in the said convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions.

### Roumania

Under the reservations formulated with respect to Articles 16, 17 and 19 of the present Convention (15, 16 and 18 of the project presented by the committee on examination) and recorded in the procès-verbal of the sitting of the Third Commission of July 20, 1899. Extract from the procès-verbal:

The Royal Government of Roumania, being completely in favor of the principle of facultative arbitration, of which it appreciates the great importance in international relations, nevertheless does not intend to undertake, by Article 15, an engagement to accept arbitration in every case there provided for, and it believes it ought to form express reservations in that respect.

It can not therefore vote for this article, except under that reservation. The Royal Government of Roumania declares that it can not adhere to Article 16 except with the express reservation, entered in the procès-verbal, that it has decided not to accept, in any case, an international arbitration for disagreements or disputes previous to the conclusion of the present Convention.

The Royal Government of Roumania declares that in adhering to Article 18 of the Convention, it makes no engagement in regard to obligatory arbitration.

## Serbia

Under the reservation recorded in the procès-verbal of the Third Commission of July 20, 1899. Extract from the procès-verbal:

In the name of the Royal Government of Serbia, we have the honor to declare that our adoption of the principle of good offices and mediation does not imply a recognition of the right of third States to use these means except with the extreme reserve which proceedings of this delicate nature require.

We do not admit good offices and mediation except on condition that their character of purely friendly counsel is maintained fully and completely, and we never could accept them in forms and circumstances such as to impress upon them the character of intervention.

## Turkey

Under reservation of the declaration made in the plenary sitting of the Conference of July 25, 1899. Extract from the procès-verbal:

The Turkish delegation, considering that the work of this Conference has been a work of high loyalty and humanity, destined solely to assure general peace by safeguarding the interests and the rights of each one, declares, in the name of its Government, that it adheres to the project just adopted, on the following conditions:

It is formally understood that recourse to good offices and mediation, to commissions of inquiry and arbitration is purely facultative and could not in any case assume an obligatory character or degenerate into intervention; The Imperial Government itself will be the judge of the cases where its interests would permit it to admit these methods without its abstention or refusal to have recourse to them being considered by the signatory States as an unfriendly act.

It goes without saying that in no case could the means in question be applied to questions concerning interior regulation.

# Convention for the Pacific Settlement of International Disputes (Hague I) (1907)

His Majesty the German Emperor, King of Prussia; [etc.]:

Animated by the sincere desire to work for the maintenance of general peace;

Resolved to promote by all the efforts in their power the friendly settlement of international disputes;

Recognizing the solidarity uniting the members of the society of civilized nations;

Desirous of extending the empire of law and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a Tribunal of Arbitration accessible to all, in the midst of independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of the procedure of arbitration;

Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an International Agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

Being desirous, with this object, of insuring the better working in practice of Commissions of Inquiry and Tribunals of Arbitration, and of facilitating recourse to arbitration in cases which allow of a summary procedure;

Have deemed it necessary to revise in certain particulars and to complete the work of the First Peace Conference for the pacific settlement of international disputes;

The High Contracting Parties have resolved to conclude a new Convention for this purpose, and have appointed the following as their Plenipotentiaries:

(List of Plenipotentiaries.)



Who, after deposited their full powers, found in good and due form, have agreed upon the following:

## **Part I. The maintenance of General Peace**

### **Article 1**

With a view to obviating as far as possible recourse to force in the relations between States, the Contracting Powers agree to use their best efforts to ensure the pacific settlement of international differences.

## **Part II. Good Offices and Mediation**

### **Article 2**

In case of serious disagreement or dispute, before an appeal to arms, the Contracting Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

### **Article 3**

Independently of this recourse, the Contracting Powers deem it expedient and desirable that one or more Powers, strangers to the dispute, should, on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

### **Article 4**

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

### **Article 5**

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

**Article 6**

Good offices and mediation undertaken either at the request of the parties in dispute or on the initiative of Powers strangers to the dispute have exclusively the character of advice, and never have binding force.

**Article 7**

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted in the absence of an agreement to the contrary.

**Article 8**

The Contracting Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering peace, the States at variance choose respectively a Power, to which they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

### **Part III.**

## **International Commissions of Inquiry**

**Article 9**

In disputes of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of facts, the Contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

**Article 10**

International Commissions of Inquiry are constituted by special agreement between the parties in dispute.

The Inquiry convention defines the facts to be examined; it determines the mode and time in which the Commission is to be formed and the extent of the powers of the Commissioners.

It also determines, if there is need, where the Commission is to sit, and whether it may remove to another place, the language the Commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and, generally speaking, all the conditions upon which the parties have agreed.

If the parties consider it necessary to appoint Assessors, the Convention of Inquiry shall determine the mode of their selection and the extent of their powers.

**Article 11**

If the Inquiry Convention has not determined where the Commission is to sit, it will sit at The Hague.

The place of meeting, once fixed, cannot be altered by the Commission except with the assent of the parties.

If the Inquiry Convention has not determined what languages are to be employed, the question shall be decided by the Commission.

**Article 12**

Unless an undertaking is made to the contrary, Commissions of Inquiry shall be formed in the manner determined by Articles 45 and 57 of the present Convention.

**Article 13**

Should one of the Commissioners or one of the Assessors, should there be any, either die, or resign, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

**Article 14**

The parties are entitled to appoint special agents to attend the Commission of Inquiry, whose duty it is to represent them and to act as intermediaries between them and the Commission.

They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the Commission.

**Article 15**

The International Bureau of the Permanent Court of Arbitration acts as registry for the Commissions which sit at The Hague, and shall place its offices and staff at the disposal of the Contracting Powers for the use of the Commission of Inquiry.

**Article 16**

If the Commission meets elsewhere than at The Hague, it appoints a Secretary-General, whose office serves as registry.

It is the function of the registry, under the control of the President, to make the necessary arrangements for the sittings of the Commission, the preparation of the Minutes, and, while the inquiry lasts, for the charge of the archives, which shall subsequently be transferred to the International Bureau at The Hague.

**Article 17**

In order to facilitate the constitution and working of Commissions of Inquiry, the Contracting Powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

**Article 18**

The Commission shall settle the details of the procedure not covered by the special Inquiry Convention or the present Convention, and shall arrange all the formalities required for dealing with the evidence.

**Article 19**

On the inquiry both sides must be heard.

At the dates fixed, each party communicates to the Commission and to the other party the statements of facts, if any, and, in all cases, the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes to be heard.

**Article 20**

The Commission is entitled, with the assent of the Powers, to move temporarily to any place where it considers it may be useful to have recourse to this means of inquiry or to send one or more of its members. Permission must be obtained from the State on whose territory it is proposed to hold the inquiry.

**Article 21**

Every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

**Article 22**

The Commission is entitled to ask from either party for such explanations and information as it considers necessary.

**Article 23**

The parties undertake to supply the Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with, and to accurately understand, the facts in question.

They undertake to make use of the means at their disposal, under their municipal law, to insure the appearance of the witnesses or experts who are in their territory and have been summoned before the Commission.

If the witnesses or experts are unable to appear before the Commission, the parties will arrange for their evidence to be taken before the qualified officials of their own country.

**Article 24**

For all notices to be served by the Commission in the territory of a third Contracting Power, the Commission shall apply direct to the Government of the said Power. The same rule applies in the case of steps being taken on the spot to procure evidence.

The requests for this purpose are to be executed so far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers they are calculated to impair its sovereign rights or its safety.

The Commission will equally be always entitled to act through the Power on whose territory it sits.

**Article 25**

The witnesses and experts are summoned on the request of the parties or by the Commission of its own motion, and, in every case, through the Government of the State in whose territory they are.

The witnesses are heard in succession and separately in the presence of the agents and counsel, and in the order fixed by the Commission.

**Article 26**

The examination of witnesses is conducted by the President.

The members of the Commission may however put to each witness questions which they consider likely to throw light on and complete his evidence, or get information on any point concerning the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the President to put such additional questions to the witness as they think expedient.

**Article 27**

The witness must give his evidence without being allowed to read any written draft. He may, however, be permitted by the President to consult notes or documents if the nature of the facts referred to necessitates their employment.

**Article 28**

A Minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks necessary, which will be recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is asked to sign it.

**Article 29**

The agents are authorized, in the course of or at the close of the inquiry, to present in writing to the Commission and to the other party such statements, requisitions, or summaries of the facts as they consider useful for ascertaining the truth.

**Article 30**

The Commission considers its decisions in private and the proceedings are secret.

All questions are decided by a majority of the members of the Commission.

If a member declines to vote, the fact must be recorded in the Minutes.

**Article 31**

The sittings of the Commission are not public, nor the Minutes and documents connected with the inquiry published except in virtue of a decision of the Commission taken with the consent of the parties.

**Article 32**

After the parties have presented all the explanations and evidence, and the witnesses have all been heard, the President declares the inquiry terminated, and the Commission adjourns to deliberate and to draw up its Report.

**Article 33**

The Report is signed by all the members of the Commission.

If one of the members refuses to sign, the fact is mentioned; but the validity of the Report is not affected.

**Article 34**

The Report of the Commission is read at a public sitting, the agents and counsel of the parties being present or duly summoned.

A copy of the Report is given to each party.

**Article 35**

The Report of the Commission is limited to a statement of facts, and has in no way the character of an Award. It leaves to the parties entire freedom as to the effect to be given to the statement.

**Article 36**

Each party pays its own expenses and an equal share of the expenses incurred by the Commission.

## **Part IV. International Arbitration**

### **Chapter I. The System of Arbitration**

**Article 37**

International arbitration has for its object the settlement of disputes between States by Judges of their own choice and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the Award.

**Article 38**

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Contracting Powers as the most effective, and, at the same time, the most equitable means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the above-mentioned questions, the Contracting Powers should, if the case arose, have recourse to arbitration, in so far as circumstances permit.

**Article 39**

The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

**Article 40**

Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Contracting Powers, the said Powers reserve to themselves the right of concluding new Agreements, general or particular, with a view to extending compulsory arbitration to all cases which they may consider it possible to submit to it.

## **Chapter II. The Permanent Court of Arbitration**

**Article 41**

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Contracting Powers undertake to maintain the Permanent Court of Arbitration, as established by the First Peace Conference, accessible at all times, and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

**Article 42**

The Permanent Court is competent for all arbitration cases, unless the parties agree to institute a special Tribunal.

**Article 43**

The Permanent Court sits at The Hague.

An International Bureau serves as registry for the Court. It is the channel for communications relative to the meetings of the Court; it has charge of the archives and conducts all the administrative business.

The Contracting Powers undertake to communicate to the Bureau, as soon as possible, a certified copy of any conditions of arbitration arrived at between them and of any Award concerning them delivered by a special Tribunal.

They likewise undertake to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the Awards given by the Court.



**Article 44**

Each Contracting Power selects four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrator.

The persons thus elected are inscribed, as Members of the Court, in a list which shall be notified to all the Contracting Powers by the Bureau.

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Contracting Powers.

Two or more Powers may agree on the selection in common of one or more Members. The same person can be selected by different Powers. The Members of the Court are appointed for a term of six years. These appointments are renewable.

Should a Member of the Court die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case the appointment is made for a fresh period of six years.

**Article 45**

When the Contracting Powers wish to have recourse to the Permanent Court for the settlement of a difference which has arisen between them, the Arbitrators called upon to form the Tribunal with jurisdiction to decide this difference must be chosen from the general list of Members of the Court.

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued:

Each party appoints two Arbitrators, of whom one only can be its national or chosen from among the persons selected by it as Members of the Permanent Court. These Arbitrators together choose an Umpire.

If the votes are equally divided, the choice of the Umpire is intrusted to a third Power, selected by the parties by common accord. If an agreement is not arrived at on this subject each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

If, within two months' time, these two Powers cannot come to an agreement, each of them presents two candidates taken from the list of Members of the Permanent Court, exclusive of the members selected by the parties and not being nationals of either of them. Drawing lots determines which of the candidates thus presented shall be Umpire.

**Article 46**

The Tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court, the text of their 'Compromis', and the names of the Arbitrators.

The Bureau communicates without delay to each Arbitrator the '*Compromis*', and the names of the other members of the Tribunal.

The Tribunal assembles at the date fixed by the parties. The Bureau makes the necessary arrangements for the meeting.

The members of the Tribunal, in the exercise of their duties and out of their own country, enjoy diplomatic privileges and immunities.

#### **Article 47**

The Bureau is authorized to place its offices and staff at the disposal of the Contracting Powers for the use of any special Board of Arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non- Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal.

#### **Article 48**

The Contracting Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

In case of dispute between two Powers, one of them can always address to the International Bureau a note containing a declaration that it would be ready to submit the dispute to arbitration.

The Bureau must at once inform the other Power of the declaration.

#### **Article 49**

The Permanent Administrative Council, composed of the Diplomatic Representatives of the Contracting Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as President, is charged with the direction and control of the International Bureau.

The Council settles its rules of procedure and all other necessary regulations.

It decides all questions of administration which may arise with regard to the operations of the Court.

It has entire control over the appointment, suspension, or dismissal of the officials and employs of the Bureau.

It fixes the payments and salaries, and controls the general expenditure.

At meetings duly summoned the presence of nine members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the Contracting Powers without delay the regulations adopted by it. It furnishes them with an annual Report on the labours of the Court, the working of the administration, and the expenditure. The Report likewise contains a résumé of what is important in the documents communicated to the Bureau by the Powers in virtue of Article 43, paragraphs 3 and 4.

#### **Article 50**

The expenses of the Bureau shall be borne by the Contracting Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

The expenses to be charged to the adhering Powers shall be reckoned from the date on which their adhesion comes into force.

### **Chapter III. Arbitration Procedure**

#### **Article 51**

With a view to encouraging the development of arbitration, the Contracting Powers have agreed on the following rules, which are applicable to arbitration procedure, unless other rules have been agreed on by the parties.

#### **Article 52**

The Powers which have recourse to arbitration sign a '*Compromis*', in which the subject of the dispute is clearly defined, the time allowed for appointing Arbitrators, the form, order, and time in which the communication referred to in Article 63 must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

The '*Compromis*' likewise defines, if there is occasion, the manner of appointing Arbitrators, any special powers which may eventually belong to the Tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

#### **Article 53**

The Permanent Court is competent to settle the '*Compromis*', if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of:

1. A dispute covered by a general Treaty of Arbitration concluded or renewed after the present Convention has come into force, and providing for a '*Compromis*' in all disputes and not either explicitly or implicitly excluding the settlement of the '*Compromis*' from the competence of the Court. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to compulsory arbitration, unless the Treaty of Arbitration confers upon the Arbitration Tribunal the power of deciding this preliminary question.
2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the '*Compromis*' should be settled in some other way.

#### **Article 54**

In the cases contemplated in the preceding Article, the '*Compromis*' shall be settled by a Commission consisting of five members selected in the manner arranged for in Article 45, paragraphs 3 to 6.

The fifth member is President of the Commission *ex officio*.

#### **Article 55**

The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen by them from the Members of the Permanent Court of Arbitration established by the present Convention.

Failing the constitution of the Tribunal by direct agreement between the parties, the course referred to in Article 45, paragraphs 3 to 6, is followed.

#### **Article 56**

When a Sovereign or the Chief of a State is chosen as Arbitrator, the arbitration procedure is settled by him.

#### **Article 57**

The Umpire is President of the Tribunal *ex officio*.

When the Tribunal does not include an Umpire, it appoints its own President.

#### **Article 58**

When the '*Compromis*' is settled by a Commission, as contemplated in Article 54, and in the absence of an agreement to the contrary, the Commission itself shall form the Arbitration Tribunal.

**Article 59**

Should one of the Arbitrators either die, retire, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

**Article 60**

The Tribunal sits at The Hague, unless some other place is selected by the parties.

The Tribunal can only sit in the territory of a third Power with the latter's consent.

The place of meeting once fixed cannot be altered by the Tribunal, except with the consent of the parties.

**Article 61**

If the question as to what languages are to be used has not been settled by the '*Compromis*', it shall be decided by the Tribunal.

**Article 62**

The parties are entitled to appoint special agents to attend the Tribunal to act as intermediaries between themselves and the Tribunal.

They are further authorized to retain for the defence of their rights and interests before the Tribunal counsel or advocates appointed by themselves for this purpose.

The Members of the permanent Court may not act as agents, counsel, or advocates except on behalf of the Power which appointed them Members of the Court.

**Article 63**

As a general rule, arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the Tribunal and the opposite party of cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers and documents called for in the case. This communication shall be made either directly or through the intermediary of the International Bureau, in the order and within the time fixed by the '*Compromis*'.

The time fixed by the '*Compromis*' may be extended by mutual agreement by the parties, or by the Tribunal when the latter considers it necessary for the purpose of reaching a just decision.

The discussions consists in the oral development before the Tribunal of the arguments of the parties.

**Article 64**

A certified copy of every document produced by one party must be communicated to the other party.

**Article 65**

Unless special circumstances arise, the Tribunal does not meet until the pleadings are closed.

**Article 66**

The discussions are under the control of the President. They are only public if it be so decided by the Tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the Secretaries appointed by the President. These minutes are signed by the President and by one of the Secretaries and alone have an authentic character.

**Article 67**

After the close of the pleadings, the Tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

**Article 68**

The Tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the Tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

**Article 69**

The Tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal the Tribunal takes note of it.

**Article 70**

The agents and the counsel of the parties are authorized to present orally to the Tribunal all the arguments they may consider expedient in defence of their case.

**Article 71**

They are entitled to raise objections and points. The decisions of the Tribunal on these points are final and cannot form the subject of any subsequent discussion.

**Article 72**

The members of the Tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the Tribunal in the course of the discussions, can be regarded as an expression of opinion by the Tribunal in general or by its members in particular.

**Article 73**

The Tribunal is authorized to declare its competence in interpreting the '*Compromis*', as well as the other Treaties which may be invoked, and in applying the principles of law.

**Article 74**

The Tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, order, and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

**Article 75**

The parties undertake to supply the Tribunal, as fully as they consider possible, with all the information required for deciding the case.

**Article 76**

For all notices which the Tribunal has to serve in the territory of a third Contracting Power, the Tribunal shall apply direct to the Government of that Power. The same rule applies in the case of steps being taken to procure evidence on the spot.

The requests for this purpose are to be executed as far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers them calculated to impair its own sovereign rights or its safety.

The Court will equally be always entitled to act through the Power on whose territory it sits.

**Article 77**

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case the President shall declare the discussion closed.

**Article 78**

The Tribunal considers its decisions in private and the proceedings remain secret. All questions are decided by a majority of the members of the Tribunal.

**Article 79**

The Award must give the reasons on which it is based. It contains the names of the Arbitrators; it is signed by the President and Registrar or by the Secretary acting as Registrar.

**Article 80**

The Award is read out in public sitting, the agents and counsel of the parties being present or duly summoned to attend.

**Article 81**

The Award, duly pronounced and notified to the agents of the parties, settles the dispute definitively and without appeal.

**Article 82**

Any dispute arising between the parties as to the interpretation and execution of the Award shall, in the absence of an Agreement to the contrary, be submitted to the Tribunal which pronounced it.

**Article 83**

The parties can reserve in the '*Compromis*' the right to demand the revision of the Award.

In this case and unless there be an Agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the Award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence upon the Award and which was unknown to the Tribunal and to the party which demanded the revision at the time the discussion was closed.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The '*Compromis*' fixes the period within which the demand for revision must be made.



**Article 84**

The Award is not binding except on the parties in dispute.

When it concerns the interpretation of a Convention to which Powers other than those in dispute are parties, they shall inform all the Signatory Powers in good time. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the Award is equally binding on them.

**Article 85**

Each party pays its own expenses and an equal share of the expenses of the Tribunal.

## **Chapter IV. Arbitration by Summary Procedure**

**Article 86**

With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the Contracting Powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as may be.

**Article 87**

Each of the parties in dispute appoints an Arbitrator. The two Arbitrators thus selected choose an Umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the Members of the Permanent Court exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the Umpire is determined by lot.

The Umpire presides over the Tribunal, which gives its decisions by a majority of votes.

**Article 88**

In the absence of any previous agreement the Tribunal, as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

**Article 89**

Each party is represented before the Tribunal by an agent, who serves as intermediary between the Tribunal and the Government who appointed him.

**Article 90**

The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts should be called. The Tribunal has, for its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in Court it may consider useful.

**Part V.  
Final Provisions****Article 91**

The present Convention, duly ratified, shall replace, as between the Contracting Powers, the Convention for the Pacific Settlement of International Disputes of the 29th July, 1899.

**Article 92**

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to those Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform the Powers of the date on which it received the notification.

**Article 93**

Non-Signatory Powers which have been invited to the Second Peace Conference may adhere to the present Convention.

The Power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall immediately forward to all the other Powers invited to the Second Peace Conference a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

**Article 94**

The conditions on which the Powers which have not been invited to the Second Peace Conference may adhere to the present Convention shall form the subject of a subsequent Agreement between the Contracting Powers.

**Article 95**

The present Convention shall take effect, in the case of the Powers which were not a party to the first deposit of ratifications, sixty days after the date of the procès-verbal of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

**Article 96**

In the event of one of the Contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

**Article 97**

A register kept by the Netherland Minister for Foreign Affairs shall give the date of the deposit of ratifications effected in virtue of Article 92, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 93, paragraph 2) or of denunciation (Article 96, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Contracting Powers.

# Vienna Convention on the Law of Treaties 1969

The States Parties to the present Convention,

*Considering* the fundamental role of treaties in the history of international relations,

*Recognizing* the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation among nations, whatever their constitutional and social systems,

*Noting* that the principles of free consent and of good faith and the pacta sunt servanda rule are universally recognized,

*Affirming* that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,

*Recalling* the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

*Having in mind* the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

*Believing* that the codification and progressive development of the law of treaties achieved in the present Convention will promote the purposes of the United Nations set forth in the Charter, namely, the maintenance of international peace and security, the development of friendly relations and the achievement of co-operation among nations,

*Affirming* that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

Have agreed as follows:

## PART I INTRODUCTION

### **Article 1. Scope of the present Convention**

The present Convention applies to treaties between States.

### **Article 2. Use of terms.**

1. For the purposes of the present Convention:
  - (a) “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;
  - (b) “ratification”, “acceptance”, “approval” and “accession” mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;
  - (c) “full powers” means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;
  - (d) “reservation” means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;
  - (e) “negotiating State” means a State which took part in the drawing up and adoption of the text of the treaty;
  - (f) “contracting State” means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;
  - (g) “party” means a State which has consented to be bound by the treaty and for which the treaty is in force;
  - (h) “third State” means a State not a party to the treaty;
  - (i) “international organization” means an intergovernmental organization.
2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

**Article 3. International agreements not within the scope of the present Convention**

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

- (a) the legal force of such agreements;
- (b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;
- (c) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

**Article 4. Non-retroactivity of the present Convention**

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

**Article 5. Treaties constituting international organizations and treaties adopted within an international organization**

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

## PART II CONCLUSION AND ENTRY INTO FORCE OF TREATIES

### SECTION 1 CONCLUSION OF TREATIES

**Article 6. Capacity of States to conclude treaties**

Every State possesses capacity to conclude treaties.

**Article 7. Full powers**

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:
  - (a) he produces appropriate full powers; or
  - (b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.
2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:
  - (a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;
  - (b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;
  - (c) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

**Article 8. Subsequent confirmation of an act performed without authorization**

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State for that purpose is without legal effect unless afterwards confirmed by that State.

**Article 9. Adoption of the text**

1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.
2. The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.

**Article 10. Authentication of the text**

The text of a treaty is established as authentic and definitive:

- (a) by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or
- (b) failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

**Article 11. Means of expressing consent to be bound by a treaty**

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

**Article 12. Consent to be bound by a treaty expressed by signature**

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:
  - (a) the treaty provides that signature shall have that effect;
  - (b) it is otherwise established that the negotiating States were agreed that signature should have that effect; or
  - (c) the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.
2. For the purposes of paragraph 1:
  - (a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed
  - (b) the signature ad referendum of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

**Article 13. Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty**

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

- (a) the instruments provide that their exchange shall have that effect; or
- (b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

**Article 14. Consent to be bound by a treaty expressed by ratification, acceptance or approval**

1. The consent of a State to be bound by a treaty is expressed by ratification when:
  - (a) the treaty provides for such consent to be expressed by means of ratification;
  - (b) it is otherwise established that the negotiating States were agreed that ratification should be required;
  - (c) the representative of the State has signed the treaty subject to ratification; or
  - (d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.



2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

#### **Article 15. Consent to be bound by a treaty expressed by accession**

The consent of a State to be bound by a treaty is expressed by accession when:

- (a) the treaty provides that such consent may be expressed by that State by means of accession;
- (b) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or
- (c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

#### **Article 16. Exchange or deposit of instruments of ratification, acceptance, approval or accession**

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

- (a) their exchange between the contracting States;
- (b) their deposit with the depositary; or
- (c) their notification to the contracting States or to the depositary, if so agreed.

#### **Article 17. Consent to be bound by part of a treaty and choice of differing provisions**

1. Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.
2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

#### **Article 18. Obligation not to defeat the object and purpose of a treaty prior to its entry into force**

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

- (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

- (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

## **SECTION 2 RESERVATIONS**

### **Article 19. Formulation of reservations**

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

- (a) the reservation is prohibited by the treaty;
- (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

### **Article 20. Acceptance of and objection to reservations**

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.
2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.
3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.
4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:
  - (a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;
  - (b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;
  - (c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

#### **Article 21. Legal effects of reservations and of objections to reservations**

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:
  - (a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and
  - (b) modifies those provisions to the same extent for that other party in its relations with the reserving State.
2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.
3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

#### **Article 22. Withdrawal of reservations and of objections to reservations**

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.
2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.
3. Unless the treaty otherwise provides, or it is otherwise agreed:
  - (a) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;
  - (b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

#### **Article 23. Procedure regarding reservations**

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.
3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.
4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

### **SECTION 3**

## **ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF TREATIES**

#### **Article 24. Entry into force**

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.
2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.
3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.
4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

#### **Article 25. Provisional application**

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:
  - (a) the treaty itself so provides; or
  - (b) the negotiating States have in some other manner so agreed.
2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

## **PART III OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES**

### **SECTION 1 OBSERVANCE OF TREATIES**

#### **Article 26. Pacta sunt servanda**

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

#### **Article 27. Internal law and observance of treaties**

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46.

### **SECTION 2 APPLICATION OF TREATIES**

#### **Article 28. Non-retroactivity of treaties**

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

#### **Article 29. Territorial scope of treaties**

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

#### **Article 30. Application of successive treaties relating to the same subject-matter**

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.
2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.
3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under Article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the latter treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:
  - (a) as between States parties to both treaties the same rule applies as in paragraph 3;
  - (b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.
5. Paragraph 4 is without prejudice to Article 41, or to any question of the termination or suspension of the operation of a treaty under Article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

### SECTION 3 INTERPRETATION OF TREATIES

#### **Article 31. General rule of interpretation**

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
  - (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
  - (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
  - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
  - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
  - (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

**Article 32. Supplementary means of interpretation**

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31:

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable.

**Article 33. Interpretation of treaties authenticated in two or more languages**

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

## SECTION 4 TREATIES AND THIRD STATES

**Article 34. General rule regarding third States**

A treaty does not create either obligations or rights for a third State without its consent.

**Article 35. Treaties providing for obligations for third States**

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

**Article 36. Treaties providing for rights for third States**

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its

assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

#### **Article 37. Revocation or modification of obligations or rights of third States**

1. When an obligation has arisen for a third State in conformity with Article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.
2. When a right has arisen for a third State in conformity with Article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

#### **Article 38. Rules in a treaty becoming binding on third States through international custom**

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.

## **PART IV AMENDMENT AND MODIFICATION OF TREATIES**

#### **Article 39. General rule regarding the amendment of treaties**

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide.

#### **Article 40. Amendment of multilateral treaties**

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.
2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:
  - (a) the decision as to the action to be taken in regard to such proposal;
  - (b) the negotiation and conclusion of any agreement for the amendment of the treaty.
3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.



4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4(b), applies in relation to such State.
5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:
  - (a) be considered as a party to the treaty as amended; and
  - (b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

**Article 41. Agreements to modify multilateral treaties between certain of the parties only**

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:
  - (a) the possibility of such a modification is provided for by the treaty; or
  - (b) the modification in question is not prohibited by the treaty and:
    - (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
    - (ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.
2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

**PART V**  
**INVALIDITY, TERMINATION AND SUSPENSION OF**  
**THE OPERATION OF TREATIES**

**SECTION 1**  
**GENERAL PROVISIONS**

**Article 42. Validity and continuance in force of treaties**

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal<sup>1</sup> of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

#### **Article 43. Obligations imposed by international law independently of a treaty**

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

#### **Article 44. Separability of treaty provisions**

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.
2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.
3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:
  - (a) the said clauses are separable from the remainder of the treaty with regard to their application;
  - (b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and
  - (c) continued performance of the remainder of the treaty would not be unjust.
4. In cases falling under articles 49 and 50 the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.
5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

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<sup>1</sup>In most of further provisions of the convention, terms “withdrawal” and “denunciation” are used simultaneously. However in the article 54 the term “withdraw” is applied exclusively, however this article also covers denunciation. See M.E. Villiger: *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Martinus Nijhoff Publishers 2009, footnote 12, p. 685, says: “the term «withdrawal» is usually applied for multilateral treaties”.

**Article 45. Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty**

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

- (a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or
- (b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

## SECTION 2 INVALIDITY OF TREATIES

**Article 46. Provisions of internal law regarding competence to conclude treaties**

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

**Article 47. Specific restrictions on authority to express the consent of a State**

If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent.

**Article 48. Error**

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.
2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.
3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

**Article 49. Fraud**

If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.

**Article 50. Corruption of a representative of a State**

If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

**Article 51. Coercion of a representative of a State**

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

**Article 52. Coercion of a State by the threat or use of force**

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

**Article 53. Treaties conflicting with a peremptory norm of general international law (jus cogens)**

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

### SECTION 3 TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

**Article 54. Termination of or withdrawal from a treaty under its provisions or by consent of the parties**

The termination of a treaty or the withdrawal of a party may take place:

- (a) in conformity with the provisions of the treaty; or

- (b) at any time by consent of all the parties after consultation with the other contracting States.

**Article 55. Reduction of the parties to a multilateral treaty below the number necessary for its entry into force**

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

**Article 56. Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal**

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:
  - (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
  - (b) a right of denunciation or withdrawal may be implied by the nature of the treaty.
2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

**Article 57. Suspension of the operation of a treaty under its provisions or by consent of the parties**

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

- (a) in conformity with the provisions of the treaty; or
- (b) at any time by consent of all the parties after consultation with the other contracting States.

**Article 58. Suspension of the operation of a multilateral treaty by agreement between certain of the parties only**

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:
  - (a) the possibility of such a suspension is provided for by the treaty; or
  - (b) the suspension in question is not prohibited by the treaty and:

- (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
  - (ii) is not incompatible with the object and purpose of the treaty.
2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

**Article 59. Termination or suspension of the operation of a treaty implied by conclusion of a later treaty**

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and:
  - (a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or
  - (b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.
2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

**Article 60. Termination or suspension of the operation of a treaty as a consequence of its breach**

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.
2. A material breach of a multilateral treaty by one of the parties entitles:
  - (a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:
    - (i) in the relations between themselves and the defaulting State, or
    - (ii) as between all the parties;
  - (b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;
  - (c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:
  - (a) a repudiation of the treaty not sanctioned by the present Convention; or
  - (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.
4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.
5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

#### **Article 61. Supervening impossibility of performance**

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.
2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

#### **Article 62. Fundamental change of circumstances**

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:
  - (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
  - (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.
2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:
  - (a) if the treaty establishes a boundary; or
  - (b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

#### **Article 63. Severance of diplomatic or consular relations**

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

#### **Article 64. Emergence of a new peremptory norm of general international law (jus cogens)**

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

### **SECTION 4 PROCEDURE**

#### **Article 65. Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a**

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.
2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.
3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in article 33 of the Charter of the United Nations.
4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.
5. Without prejudice to article 45, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.



**Article 66. Procedures for judicial settlement, arbitration and conciliation**

If, under paragraph 3 of article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

- (a) any one of the parties to a dispute concerning the application or the interpretation of articles 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;
- (b) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

**Article 67. Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty**

1. The notification provided for under article 65 paragraph 1 must be made in writing.
2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

**Article 68. Revocation of notifications and instruments provided for in articles 65 and 67**

A notification or instrument provided for in articles 65 or 67 may be revoked at any time before it takes effect.

## SECTION 5 CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY

**Article 69. Consequences of the invalidity of a treaty**

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.
2. If acts have nevertheless been performed in reliance on such a treaty:
  - (a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

- (b) acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.
- 3. In cases falling under articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.
- 4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

#### **Article 70. Consequences of the termination of a treaty**

- 1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:
  - (a) releases the parties from any obligation further to perform the treaty;
  - (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.
- 2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

#### **Article 71. Consequences of the invalidity of a treaty which conflict with a peremptory norm of general international law**

- 1. In the case of a treaty which is void under article 53 the parties shall:
  - (a) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and
  - (b) bring their mutual relations into conformity with the peremptory norm of general international law.
- 2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:
  - (a) releases the parties from any obligation further to perform the treaty;
  - (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

**Article 72. Consequences of the suspension of the operation of a treaty**

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:
  - (a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;
  - (b) does not otherwise affect the legal relations between the parties established by the treaty.
2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

## **PART VI MISCELLANEOUS PROVISIONS**

**Article 73. Cases of State succession, State responsibility and outbreak of hostilities**

The provisions of the present Convention shall not prejudice any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

**Article 74. Diplomatic and consular relations and the conclusion of treaties**

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

**Article 75. Case of an aggressor State**

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

## PART VII DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION

### Article 76. Depositaries of treaties

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.
2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

### Article 77. Functions of depositaries

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:
  - (a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;
  - (b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;
  - (c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;
  - (d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;
  - (e) informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;
  - (f) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;
  - (g) registering the treaty with the Secretariat of the United Nations;
  - (h) performing the functions specified in other provisions of the present Convention.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.

#### **Article 78. Notifications and communications**

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:

- (a) if there is no depositary, be transmitted direct to the States for which it is intended, or if there is a depositary, to the latter;
- (b) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;
- (c) if transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary in accordance with article 77, paragraph 1 (e).

#### **Article 79. Correction of errors in texts or in certified copies of treaties**

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:
  - (a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;
  - (b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or
  - (c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.
2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:
  - (a) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;
  - (b) an objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.
4. The corrected text replaces the defective text *ab initio*, unless the signatory States and the contracting States otherwise decide.
5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.
6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy of it to the signatory States and to the contracting States.

#### **Article 80. Registration and publication of treaties**

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.
2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

## **PART VIII FINAL PROVISIONS**

#### **Article 81. Signature**

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

#### **Article 82. Ratification**

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

#### **Article 83. Accession**

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 84. Entry into force**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

**Article 85. Authentic texts**

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

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

DONE at Vienna, this twenty-third day of May, one thousand nine hundred and sixty-nine.

**ANNEX**

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.
2. When a request has been made to the Secretary-General under article 66, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

- (a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and
- (b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties

shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

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

- (c) The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.
- (d) The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.
- (e) The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.
- (f) The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.
- (g) The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.



# Vienna Convention on Succession of States in Respect of Treaties 1978

*The States Parties to the present Convention,*

*Considering* the profound transformation of the international community brought about by the decolonization process,

*Considering* also that other factors may lead to cases of succession of States in the future,

*Convinced*, in these circumstances, of the need for the codification and progressive development of the rules relating to succession of States in respect of treaties as a means for ensuring greater juridical security in international relations,

*Noting* that the principles of free consent, good faith and pacta sunt servanda are universally recognized,

*Emphasizing* that the consistent observance of general multilateral treaties which deal with the codification and progressive development of international law and those the object and purpose of which are of interest to the international community as a whole is of special importance for the strengthening of peace and international cooperation,

*Having in mind* the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms for all,

*Recalling* that respect for the territorial integrity and political independence of any State is required by the Charter of the United Nations,

*Bearing in mind* the provisions of the Vienna Convention on the Law of Treaties of 1969,

*Bearing also in mind* article 73 of that Convention,

*Affirming* that questions of the law of treaties other than those that may arise from a succession of States are governed by the relevant rules of international law, including those rules of customary international law which are embodied in the Vienna Convention on the Law of Treaties of 1969,

*Affirming* that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

*Have agreed as follows:*

## **Part I**

### **General Provisions**

#### **Article 1. Scope of the present Convention**

The present Convention applies to the effects of a succession of States in respect of treaties between States.

#### **Article 2. Use of terms**

1. For the purposes of the present Convention:
  - (a) “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation;
  - (b) “succession of States” means the replacement of one State by another in the responsibility for the international relations of territory;
  - (c) “predecessor State” means the State which has been replaced by another State on the occurrence of a succession of States;
  - (d) “successor State” means the State which has replaced another State on the occurrence of a succession of States;
  - (e) “date of the succession of States” means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;
  - (f) “newly independent State” means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible;

- (g) “notification of succession” means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty;
  - (h) “full powers” means in relation to a notification of succession or any other notification under the present Convention a document emanating from the competent authority of a State designating a person or persons to represent the State for communicating the notification of succession or, as the case may be, the notification;
  - (i) “ratification”, “acceptance” and “approval” mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;
  - (j) “reservation” means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty or when making a notification of succession to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;
  - (k) “contracting State” means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;
  - (l) “party” means a State which has consented to be bound by the treaty and for which the treaty is in force;
  - (m) “other State party” means in relation to a successor State any party, other than the predecessor State, to a treaty in force at the date of a succession of States in respect of the territory to which that succession of States relates;
  - (n) “international organization” means an intergovernmental organization.
2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

### **Article 3. Cases not within the scope of the present Convention**

The fact that the present Convention does not apply to the effects of a succession of States in respect of international agreements concluded between States and other subjects of international law or in respect of international agreements not in written form shall not affect:

- (a) the application to such cases of any of the rules set forth in the present Convention to which they are subject under international law independently of the Convention;
- (b) the application as between States of the present Convention to the effects of a succession of States in respect of international agreements to which other subjects of international law are also parties.

**Article 4. Treaties constituting international organizations and treaties adopted within an international organization**

The present Convention applies to the effects of a succession of States in respect of:

- (a) any treaty which is the constituent instrument of an international organization without prejudice to the rules concerning acquisition of membership and without prejudice to any other relevant rules of the organization;
- (b) any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

**Article 5. Obligations imposed by international law independently of a treaty**

The fact that a treaty is not considered to be in force in respect of a State by virtue of the application of the present Convention shall not in any way impair the duty of that State to fulfil any obligation embodied in the treaty to which it is subject under international law independently of the treaty.

**Article 6. Cases of succession of States covered by the present Convention**

The present Convention applies only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

**Article 7. Temporal application of the present Convention**

1. Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the Convention except as may be otherwise agreed.
2. A successor State may, at the time of expressing its consent to be bound by the present Convention or at any time thereafter, make a declaration that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State Party to the Convention which makes a declaration accepting the declaration, of the successor State. Upon the entry into force of the Convention as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the Convention shall apply to the effects of the succession of States as from the date of that succession of States.
3. A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of

the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present Convention of the communication to him of that notification and of its terms.

#### **Article 8. Agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State**

1. The obligations or rights of a predecessor State under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State towards other States Parties to those treaties by reason only of the fact that the predecessor State and the successor State have concluded an agreement providing that such obligations or rights shall devolve upon the successor State.
2. Notwithstanding the conclusion of such an agreement, the effects of a succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

#### **Article 9. Unilateral declaration by a successor State regarding treaties of the predecessor State**

1. Obligations or rights under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State or of other States Parties to those treaties by reason only of the fact that the successor State has made a unilateral declaration providing for the continuance in force of the treaties in respect of its territory.
2. In such a case, the effects of the succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

#### **Article 10. Treaties providing for the participation of a successor State**

1. When a treaty provides that, on the occurrence of a succession of States, a successor State shall have the option to consider itself a party to the treaty, it may notify its succession in respect of the treaty in conformity with the provisions of the treaty or, failing any such provisions, in conformity with the provisions of the present Convention.

2. If a treaty provides that, on the occurrence of a succession of States, a successor State shall be considered as a party to the treaty, that provision takes effect as such only if the successor State expressly accepts in writing to be so considered.
3. In cases falling under paragraph 1 or 2, a successor State which establishes its consent to be a party to the treaty is considered as a party from the date of the succession of States unless the treaty otherwise provides or it is otherwise agreed.

#### **Article 11. Boundary regimes**

A succession of States does not as such affect:

- (a) a boundary established by a treaty; or
- (b) obligations and rights established by a treaty and relating to the regime of a boundary.

#### **Article 12. Other territorial regimes**

1. A succession of States does not as such affect:
  - (a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question;
  - (b) rights established by a treaty for the benefit of any territory and relating to the use, or to restrictions upon the use, of any territory of a foreign State and considered as attaching to the territories in question.
2. A succession of States does not as such affect:
  - (a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of a group of States or of all States and considered as attaching to that territory;
  - (b) rights established by a treaty for the benefit of a group of States or of all States and relating to the use of any territory, or to restrictions upon its use, and considered as attaching to that territory.
3. The provisions of the present article do not apply to treaty obligations of the predecessor State providing for the establishment of foreign military bases on the territory to which the succession of States relates.

#### **Article 13. The present Convention and permanent sovereignty over natural wealth and resources**

Nothing in the present Convention shall affect the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources.

**Article 14. Questions relating to the validity of a treaty**

Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the validity of a treaty.

## **Part II**

### **Succession in Respect of Part of Territory**

**Article 15. Succession in respect of part of territory**

When part of the territory of a State, or when any territory for the international relations of which a State is responsible, not being part of the territory of that State, becomes part of the territory of another State:

- (a) treaties of the predecessor State cease to be in force in respect of the territory to which the succession of States relates from the date of the succession of States; and
- (b) treaties of the successor State are in force in respect of the territory to which the succession of States relates from the date of the succession of States, unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

## **Part III**

### **Newly Independent States**

#### **Section 1**

##### **General rule**

**Article 16. Position in respect of the treaties of the predecessor State**

A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.

#### **Section 2**

##### **Multilateral treaties**

**Article 17. Participation in treaties in force at the date of the succession of States**

1. Subject to paragraphs 2 and 3, a newly independent State may, by a notification of succession, establish its status as a party to any multilateral treaty which at the date of the succession of States was in force in respect of the territory to which the succession of States relates.
2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be

incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties, the newly independent State may establish its status as a party to the treaty only with such consent.

**Article 18. Participation in treaties not in force at the date of the succession of States**

1. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a contracting State to a multilateral treaty which is not in force if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.
2. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.
3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.
4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may establish its status as a party or as a contracting State to the treaty only with such consent.
5. When a treaty provides that a specified number of contracting States shall be necessary for its entry into force, a newly independent State which establishes its status as a contracting State to the treaty under paragraph 1 shall be counted as a contracting State for the purpose of that provision unless a different intention appears from the treaty, or is otherwise established.

**Article 19. Participation in treaties signed by the predecessor State subject to ratification, acceptance or approval**

1. Subject to paragraphs 3 and 4, if before the date of the succession of States the predecessor State signed a multilateral treaty subject to ratification, acceptance



or approval and by the signature intended that the treaty should extend to the territory to which the succession of States relates, the newly independent State may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. For the purpose of paragraph 1, unless a different intention appears from the treaty or is otherwise established, the signature by the predecessor State of a treaty is considered to express the intention that the treaty should extend to the entire territory for the international relations of which the predecessor State was responsible.
3. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.
4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may become a party or a contracting State to the treaty only with such consent.

#### **Article 20. Reservations**

1. When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession under article 17 or 18, it shall be considered as maintaining any reservation to that treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates unless, when making the notification of succession, it expresses a contrary intention or formulates a reservation which relates to the same subject matter as that reservation.
2. When making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty under article 17 or 18, a newly independent State may formulate a reservation unless the reservation is one the formulation of which would be excluded by the provisions of subparagraph (a), (b) or (c) of article 19 of the Vienna Convention on the Law of Treaties.
3. When a newly independent State formulates a reservation in conformity with paragraph 2, the rules set out in articles 20 to 23 of the Vienna Convention on the Law of Treaties apply in respect of that reservation.

#### **Article 21. Consent to be bound by part of a treaty and choice between differing provisions**

1. When making a notification of succession under article 17 or 18 establishing its status as a party or contracting State to a multilateral treaty, a newly independent

State may, if the treaty so permits, express its consent to be bound by part of the treaty or make a choice between differing provisions under the conditions laid down in the treaty for expressing such consent or making such choice.

2. A newly independent State may also exercise, under the same conditions as the other parties or contracting States, any right provided for in the treaty to withdraw or modify any consent expressed or choice made by itself or by the predecessor State in respect of the territory to which the succession of States relates.
3. If the newly independent State does not in conformity with paragraph 1 express its consent or make a choice, or in conformity with paragraph 2 withdraw or modify the consent or choice of the predecessor State, it shall be considered as maintaining:
  - (a) the consent of the predecessor State, in conformity with the treaty, to be bound, in respect of the territory to which the succession of States relates, by part of that treaty; or
  - (b) the choice of the predecessor State, in conformity with the treaty, between differing provisions in the application of the treaty in respect of the territory to which the succession of States relates.

#### **Article 22. Notification of succession**

1. A notification of succession in respect of a multilateral treaty under article 17 or 18 shall be made in writing.
2. If the notification of succession is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.
3. Unless the treaty otherwise provides, the notification of succession shall:
  - (a) be transmitted by the newly independent State to the depositary, or, if there is no depositary, to the parties or the contracting States;
  - (b) be considered to be made by the newly independent State on the date on which it is received by the depositary or, if there is no depositary, on the date on which it is received by all the parties or, as the case may be, by all the contracting States.
4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification of succession or any communication made in connection therewith by the newly independent State.
5. Subject to the provisions of the treaty, the notification of succession or the communication made in connection therewith shall be considered as received by the State for which it is intended only when the latter State has been informed by the depositary.

**Article 23. Effects of a notification of succession**

1. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 17 or article 18, paragraph 2, shall be considered a party to the treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever is the later date.
2. Nevertheless, the operation of the treaty shall be considered as suspended as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession except insofar as that treaty may be applied provisionally in accordance with article 27 or as may be otherwise agreed.
3. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 18, paragraph 1, shall be considered a contracting State to the treaty from the date on which the notification of succession is made.

**Section 3  
Bilateral treaties****Article 24. Conditions under which a treaty is considered as being in force in the case of a succession of States**

1. A bilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party when:
  - (a) they expressly so agree; or
  - (b) by reason of their conduct they are to be considered as having so agreed.
2. A treaty considered as being in force under paragraph 1 applies in the relations between the newly independent State and the other State party from the date of the succession of States, unless a different intention appears from their agreement or is otherwise established.

**Article 25. The position as between the predecessor State and the newly independent State**

A treaty which under article 24 is considered as being in force between a newly independent State and the other State party is not by reason only of that fact to be considered as being in force also in the relations between the predecessor State and the newly independent State.

**Article 26. Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party**

1. When under article 24 a treaty is considered as being in force between a newly independent State and the other State party, the treaty:
  - (a) does not cease to be in force between them by reason only of the fact that it has subsequently been terminated as between the predecessor State and the other State party;
  - (b) is not suspended in operation as between them by reason only of the fact that it has subsequently been suspended in operation as between the predecessor State and the other State party;
  - (c) is not amended as between them by reason only of the fact that it has subsequently been amended as between the predecessor State and the other State party.
2. The fact that a treaty has been terminated or, as the case may be, suspended in operation as between the predecessor State and the other State party after the date of the succession of States does not prevent the treaty from being considered to be in force or, as the case may be, in operation as between the newly independent State and the other State party if it is established in accordance with article 24 that they so agreed.
3. The fact that a treaty has been amended as between the predecessor State and the other State party after the date of the succession of States does not prevent the unamended treaty from being considered to be in force under article 24 as between the newly independent State and the other State party, unless it is established that they intended the treaty as amended to apply between them.

**Section 4  
Provisional application****Article 27. Multilateral treaties**

1. If, at the date of the succession of States, a multilateral treaty was in force in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any party which expressly so agrees or by reason of its conduct is to be considered as having so agreed.
2. Nevertheless, in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, the consent of all the parties to such provisional application is required.

3. If, at the date of the succession of States, a multilateral treaty not yet in force was being applied provisionally in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should continue to be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any contracting State which expressly so agrees or by reason of its conduct is to be considered as having so agreed.
4. Nevertheless, in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, the consent of all the contracting States to such continued provisional application is required.
5. Paragraphs 1 to 4 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

#### **Article 28. Bilateral treaties**

A bilateral treaty which at the date of a succession of States was in force or was being provisionally applied in respect of the territory to which the succession of States relates is considered as applying provisionally between the newly independent State and the other State concerned when:

- (a) they expressly so agree; or
- (b) by reason of their conduct they are to be considered as having so agreed.

#### **Article 29. Termination of provisional application**

1. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 27 may be terminated:
  - (a) by reasonable notice of termination given by the newly independent State or the party or contracting State provisionally applying the treaty and the expiration of the notice; or
  - (b) in the case of a treaty which falls within the category mentioned in article 17, paragraph 3, by reasonable notice of termination given by the newly independent State or all of the parties or, as the case may be, all of the contracting States and the expiration of the notice.
2. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a bilateral treaty under article 28 may be terminated by reasonable notice of termination given by the newly independent State or the other State concerned and the expiration of the notice.

3. Unless the treaty provides for a shorter period for its termination or it is otherwise agreed, reasonable notice of termination shall be twelve months' notice from the date on which it is received by the other State or States provisionally applying the treaty.
4. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 27 shall be terminated if the newly independent State gives notice of its intention not to become a party to the treaty.

## **Section 5**

### **Newly independent States formed from two or more territories**

#### **Article 30. Newly independent States formed from two or more territories**

1. Articles 16 to 29 apply in the case of a newly independent State formed from two or more territories.
2. When a newly independent State formed from two or more territories is considered as or becomes a party to a treaty by virtue of article 17, 18 or 24 and at the date of the succession of States the treaty was in force, or consent to be bound had been given, in respect of one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of that State unless:
  - (a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;
  - (b) in the case of a multilateral treaty not falling under article 17, paragraph 3, or under article 18, paragraph 4, the notification of succession is restricted to the territory in respect of which the treaty was in force at the date of the succession of States, or in respect of which consent to be bound by the treaty had been given prior to that date;
  - (c) in the case of a multilateral treaty falling under article 17, paragraph 3, or under article 18, paragraph 4, the newly independent State and the other States Parties or, as the case may be, the other contracting States otherwise agree; or
  - (d) in the case of a bilateral treaty, the newly independent State and the other State concerned otherwise agree.
3. When a newly independent State formed from two or more territories becomes a party to a multilateral treaty under article 19 and by the signature or signatures of the predecessor State or States it had been intended that the treaty should extend to one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of the newly independent State unless:

- (a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;
- (b) in the case of a multilateral treaty not falling under article 19, paragraph 4, the ratification, acceptance or approval of the treaty is restricted to the territory or territories to which it was intended that the treaty should extend; or
- (c) in the case of a multilateral treaty falling under article 19, paragraph 4, the newly independent State and the other States Parties or, as the case may be, the other contracting States otherwise agree.

## **Part IV**

### **Uniting and Separation of States**

#### **Article 31. Effects of a uniting of States in respect of treaties in force at the date of the succession of States**

1. When two or more States unite and so form one successor State, any treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the successor State unless:
  - (a) the successor State and the other State party or States Parties otherwise agree; or
  - (b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.
2. Any treaty continuing in force in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was in force at the date of the succession of States unless:
  - (a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State makes a notification that the treaty shall apply in respect of its entire territory;
  - (b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and the other States Parties otherwise agree; or
  - (c) in the case of a bilateral treaty, the successor State and the other State party otherwise agree.
3. Paragraph 2 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

**Article 32. Effects of a uniting of States in respect of treaties not in force at the date of the succession of States**

1. Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, any of the predecessor States was a contracting State to the treaty.
2. Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if, at that date, any of the predecessor States was a contracting State to the treaty.
3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.
4. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.
5. Any treaty to which the successor State becomes a contracting State or a party in conformity with paragraph 1 or 2 shall apply only in respect of the part of the territory of the successor State in respect of which consent to be bound by the treaty had been given prior to the date of the succession of States unless:
  - (a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State indicates in its notification made under paragraph 1 or 2 that the treaty shall apply in respect of its entire territory; or
  - (b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.
6. Paragraph 5 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

**Article 33. Effects of a uniting of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval**

1. Subject to paragraphs 2 and 3, if before the date of the succession of States one of the predecessor States had signed a multilateral treaty subject to ratification, acceptance or approval, a successor State falling under article 31 may ratify, accept



or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.
3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.
4. Any treaty to which the successor State becomes a party or a contracting State in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was signed by one of the predecessor States unless:
  - (a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State when ratifying, accepting or approving the treaty gives notice that the treaty shall apply in respect of its entire territory; or
  - (b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.
5. Paragraph 4 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

#### **Article 34. Succession of States in cases of separation of parts of a State**

1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:
  - (a) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;
  - (b) any treaty in force at the date of the succession of States in respect only of that part of the territory of the predecessor State which has become a successor State continues in force in respect of that successor State alone.
2. Paragraph 1 does not apply if:
  - (a) the States concerned otherwise agree; or

- (b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

### **Article 35. Position if a State continues after separation of part of its territory**

When, after separation of any part of the territory of a State, the predecessor State continues to exist, any treaty which at the date of the succession of States was in force in respect of the predecessor State continues in force in respect of its remaining territory unless:

- (a) the States concerned otherwise agree;
- (b) it is established that the treaty related only to the territory which has separated from the predecessor State; or
- (c) it appears from the treaty or is otherwise established that the application of the treaty in respect of the predecessor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

### **Article 36. Participation in treaties not in force at the date of the succession of States in cases of separation of parts of a State**

1. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.
2. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at that date the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.
3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.
4. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

**Article 37. Participation in cases of separation of parts of a State in treaties signed by the predecessor State subject to ratification, acceptance or approval**

1. Subject to paragraphs 2 and 3, if before the date of the succession of States the predecessor State had signed a multilateral treaty subject to ratification, acceptance or approval and the treaty, if it had been in force at that date, would have applied in respect of the territory to which the succession of States relates, a successor State falling under article 34, paragraph 1, may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.
2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.
3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

**Article 38. Notifications**

1. Any notification under articles 31, 32 or 36 shall be made in writing.
2. If the notification is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.
3. Unless the treaty otherwise provides, the notification shall:
  - (a) be transmitted by the successor State to the depositary, or, if there is no depositary, to the parties or the contracting States;
  - (b) be considered to be made by the successor State on the date on which it is received by the depositary or, if there is no depositary, on the date on which it is received by all the parties or, as the case may be, by all the contracting States.
4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification or any communication made in connection therewith by the successor State.
5. Subject to the provisions of the treaty, such notification or communication shall be considered as received by the State for which it is intended only when the latter State has been informed by the depositary.

## **Part V**

### **Miscellaneous Provisions**

#### **Article 39. Cases of State responsibility and outbreak of hostilities**

The provisions of the present Convention shall not prejudice any question that may arise in regard to the effects of a succession of States in respect of a treaty from the international responsibility of a State or from the outbreak of hostilities between States.

#### **Article 40. Cases of military occupation**

The provisions of the present Convention shall not prejudice any question that may arise in regard to a treaty from the military occupation of a territory.

## **Part VI**

### **Settlement of Disputes**

#### **Article 41. Consultation and negotiation**

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

#### **Article 42. Conciliation**

If the dispute is not resolved within six months of the date on which the request referred to in article 41 has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

#### **Article 43. Judicial settlement and arbitration**

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles 41 and 42, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

#### **Article 44. Settlement by common consent**

Notwithstanding articles 41, 42 and 43, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they may by common consent agree to submit it to the International Court

of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

**Article 45. Other provisions in force for the settlement of disputes**

Nothing in articles 41 to 44 shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

## **Part VII**

### **Final Provisions**

#### **Article 46. Signature**

The present Convention shall be open for signature by all States until 28 February 1979 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 31 August 1979, at United Nations Headquarters in New York.

#### **Article 47. Ratification**

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

#### **Article 48. Accession**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 49. Entry into force**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### **Article 50. Authentic texts**

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

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

DONE AT VIENNA this twenty-third day of August, one thousand nine hundred and seventy-eight.

## **Annex**

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so

nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 42, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

- (a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and
- (b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

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

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.
4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.
5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.
7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.



# Responsibility of States for Internationally Wrongful Acts – ILC Draft 2006<sup>1</sup>

## Part I THE INTERNATIONALLY WRONGFUL ACT OF A STATE

### Chapter I GENERAL PRINCIPLES

#### **Article 1. Responsibility of a State for its internationally wrongful acts**

Every internationally wrongful act of a State entails the international responsibility of that State.

#### **Article 2. Elements of an internationally wrongful act of a State**

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) is attributable to the State under international law; and
- (b) constitutes a breach of an international obligation of the State.

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<sup>1</sup>See: Resolution 56/83 adopted by the General Assembly, A/RES/56/83. This draft is not preparatory work of codification convention. The UN General Assembly commends these articles “to the attention of Governments”. In Report of the International Law Commission, Fifty-third session (23 April – 1 June and 2 July – 10 August 2001, General Assembly Official Records, Fifty-sixth session, Supplement No.10 (A/56/10), § 64, p. 39, it is said that “a convention was not strictly necessary since the draft articles adopted on second reading were bound to be influential, just as the existing text had been widely cited and relied on by the International Court and other tribunals”.

**Article 3. Characterization of an act of a State as internationally wrongful**

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

**Chapter II  
ATTRIBUTION OF CONDUCT TO A STATE****Article 4. Conduct of organs of a State**

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.
2. An organ includes any person or entity which has that status in accordance with the internal law of the State.

**Article 5. Conduct of persons or entities exercising elements of governmental authority**

The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.

**Article 6. Conduct of organs placed at the disposal of a State by another State**

The conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed.

**Article 7. Excess of authority or contravention of instructions**

The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.

**Article 8. Conduct directed or controlled by a State**

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

**Article 9. Conduct carried out in the absence or default of the official authorities**

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

**Article 10. Conduct of an insurrectional or other movement**

1. The conduct of an insurrectional movement which becomes the new Government of a State shall be considered an act of that State under international law.
2. The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.
3. This article is without prejudice to the attribution to a State of any conduct, however related to that of the movement concerned, which is to be considered an act of that State by virtue of articles 4 to 9.

**Article 11. Conduct acknowledged and adopted by a State as its own**

Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.

### **Chapter III BREACH OF AN INTERNATIONAL OBLIGATION**

**Article 12. Existence of a breach of an international obligation**

There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.

**Article 13. International obligation in force for a State**

An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.

**Article 14. Extension in time of the breach of an international obligation**

1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.
3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

#### **Article 15. Breach consisting of a composite act**

1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.
2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

### **Chapter IV RESPONSIBILITY OF A STATE IN CONNECTION WITH THE ACT OF ANOTHER STATE**

#### **Article 16. Aid or assistance in the commission of an internationally wrongful act**

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.

#### **Article 17. Direction and control exercised over the commission of an internationally wrongful act**

A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.

**Article 18. Coercion of another State**

A State which coerces another State to commit an act is internationally responsible for that act if:

- (a) the act would, but for the coercion, be an internationally wrongful act of the coerced State; and
- (b) the coercing State does so with knowledge of the circumstances of the act.

**Article 19. Effect of this chapter**

This chapter is without prejudice to the international responsibility, under other provisions of these articles, of the State which commits the act in question, or of any other State.

## **Chapter V CIRCUMSTANCES PRECLUDING WRONGFULNESS**

**Article 20. Consent**

Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.

**Article 21. Self-defence**

The wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations.

**Article 22. Countermeasures in respect of an internationally wrongful act**

The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State in accordance with chapter II of part three.

**Article 23. Force majeure**

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act is due to force majeure, that is the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation.
2. Paragraph 1 does not apply if: the situation of force majeure is due, either alone or in combination with other factors, to the

- (a) conduct of the State invoking it; or
- (b) the State has assumed the risk of that situation occurring.

#### **Article 24. Distress**

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.
2. Paragraph 1 does not apply if: the situation of distress is due, either alone or in combination with other factors, to the conduct of
  - (a) the State invoking it; or
  - (b) the act in question is likely to create a comparable or greater peril.

#### **Article 25. Necessity**

1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act:
  - (a) is the only way for the State to safeguard an essential interest against a grave and imminent peril; and
  - (b) does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.
2. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if:
  - (a) the international obligation in question excludes the possibility of invoking necessity; or
  - (b) the State has contributed to the situation of necessity.

#### **Article 26. Compliance with peremptory norms**

Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law.

#### **Article 27 Consequences of invoking a circumstance precluding wrongfulness**

The invocation of a circumstance precluding wrongfulness in accordance with this chapter is without prejudice to:

- (a) compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;
- (b) the question of compensation for any material loss caused by the act in question.

## **Part TWO**

# **CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF A STATE**

### **Chapter I**

#### **GENERAL PRINCIPLES**

#### **Article 28. Legal consequences of an internationally wrongful act**

The international responsibility of a State which is entailed by an internationally wrongful act in accordance with the provisions of part one involves legal consequences as set out in this part.

#### **Article 29. Continued duty of performance**

The legal consequences of an internationally wrongful act under this part do not affect the continued duty of the responsible State to perform the obligation breached.

#### **Article 30. Cessation and non-repetition**

The State responsible for the internationally wrongful act is under an obligation:

- (a) to cease that act, if it is continuing;
- (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

#### **Article 31. Reparation**

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

#### **Article 32. Irrelevance of internal law**

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this part.

**Article 33. Scope of international obligations set out in this part**

1. The obligations of the responsible State set out in this part may be owed to another State, to several States, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.
2. This part is without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State.

## **Chapter II REPARATION FOR INJURY**

**Article 34. Forms of reparation**

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

**Article 35. Restitution**

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- (a) is not materially impossible;
- (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

**Article 36. Compensation**

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

**Article 37. Satisfaction**

1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.
2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.



3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.

#### **Article 38. Interest**

1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.
2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

#### **Article 39. Contribution to the injury**

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought.

### **Chapter III**

## **SERIOUS BREACHES OF OBLIGATIONS UNDER PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW**

#### **Article 40. Application of this chapter**

1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.
2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.

#### **Article 41. Particular consequences of a serious breach of an obligation under this chapter**

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.
2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.
3. This article is without prejudice to the other consequences referred to in this part and to such further consequences that a breach to which this chapter applies may entail under international law.

## **Part THREE**

# **THE IMPLEMENTATION OF THE INTERNATIONAL RESPONSIBILITY OF A STATE**

### **Chapter I**

## **INVOCATION OF THE RESPONSIBILITY OF A STATE**

#### **Article 42. Invocation of responsibility by an injured State**

A State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to:

- (a) that State individually; or
- (b) a group of States including that State, or the international community as a whole, and the breach of the obligation:
  - (i) specially affects that State; or
  - (ii) is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation.

#### **Article 43. Notice of claim by an injured State**

1. An injured State which invokes the responsibility of another State shall give notice of its claim to that State.
2. The injured State may specify in particular:
  - (a) the conduct that the responsible State should take in order to cease the wrongful act, if it is continuing;
  - (b) what form reparation should take in accordance with the provisions of part two.

#### **Article 44. Admissibility of claims**

The responsibility of a State may not be invoked if:

- (a) the claim is not brought in accordance with any applicable rule relating to the nationality of claims;
- (b) the claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.

**Article 45. Loss of the right to invoke responsibility**

The responsibility of a State may not be invoked if:

- (a) the injured State has validly waived the claim;
- (b) the injured State is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

**Article 46. Plurality of injured States**

Where several States are injured by the same internationally wrongful act, each injured State may separately invoke the responsibility of the State which has committed the internationally wrongful act.

**Article 47. Plurality of responsible States**

1. Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.
2. Paragraph 1:
  - (a) does not permit any injured State to recover, by way of compensation, more than the damage it has suffered;
  - (b) is without prejudice to any right of recourse against the other responsible States.

**Article 48. Invocation of responsibility by a State other than an injured State**

1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if:
  - (a) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or
  - (b) the obligation breached is owed to the international community as a whole.
2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:
  - (a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and
  - (b) performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.
3. The requirements for the invocation of responsibility by an injured State under articles 43, 44 and 45 apply to an invocation of responsibility by a State entitled to do so under paragraph 1.

## **Chapter II**

### **COUNTERMEASURES**

#### **Article 49. Object and limits of countermeasures**

1. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under part two.
2. Countermeasures are limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State.
3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

#### **Article 50. Obligations not affected by countermeasures**

1. Countermeasures shall not affect:
  - (a) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;
  - (b) obligations for the protection of fundamental human rights;
  - (c) obligations of a humanitarian character prohibiting reprisals;
  - (d) other obligations under peremptory norms of general international law.
2. A State taking countermeasures is not relieved from fulfilling its obligations:
  - (a) under any dispute settlement procedure applicable between it and the responsible State;
  - (b) to respect the inviolability of diplomatic or consular agents, premises, archives and documents.

#### **Article 51. Proportionality**

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

#### **Article 52. Conditions relating to resort to countermeasures**

1. Before taking countermeasures, an injured State shall:
  - (a) call upon the responsible State, in accordance with article 43, to fulfil its obligations under part two;
  - (b) notify the responsible State of any decision to take countermeasures and offer to negotiate with that State.

2. Notwithstanding paragraph 1 (b), the injured State may take such urgent countermeasures as are necessary to preserve its rights.
3. Countermeasures may not be taken, and if already taken must be suspended without undue delay if:
  - (a) the internationally wrongful act has ceased; and
  - (b) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.
4. Paragraph 3 does not apply if the responsible State fails to implement the dispute settlement procedures in good faith.

#### **Article 53. Termination of countermeasures**

Countermeasures shall be terminated as soon as the responsible State has complied with its obligations under part two in relation to the internationally wrongful act.

#### **Article 54. Measures taken by States other than an injured State**

This chapter does not prejudice the right of any State, entitled under article 48, paragraph 1, to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached.

## **Part FOUR GENERAL PROVISIONS**

#### **Article 55. *Lex specialis***

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law.

#### **Article 56. Questions of State responsibility not regulated by these articles**

The applicable rules of international law continue to govern questions concerning the responsibility of a State for an internationally wrongful act to the extent that they are not regulated by these articles.

#### **Article 57. Responsibility of an international organization**

These articles are without prejudice to any question of the responsibility under international law of an international organization, or of any State for the conduct of an international organization.

**Article 58. Individual responsibility**

These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State.

**Article 59. Charter of the United Nations**

These articles are without prejudice to the Charter of the United Nations.

# Vienna Convention on Diplomatic Relations 1961

The States Parties to the present Convention,

*Recalling* that peoples of all nations from ancient times have recognized the status of diplomatic agents,

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

*Believing* that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

*Realizing* that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

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

*Have agreed* as follows:

## **Article 1**

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) the “head of the mission” is the person charged by the sending State with the duty of acting in that capacity;
- (b) the “members of the mission” are the head of the mission and the members of the staff of the mission;
- (c) the “members of the staff of the mission” are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;

- (d) the “members of the diplomatic staff” are the members of the staff of the mission having diplomatic rank;
- (e) a “diplomatic agent” is the head of the mission or a member of the diplomatic staff of the mission;
- (f) the “members of the administrative and technical staff” are the members of the staff of the mission employed in the administrative and technical service of the mission;
- (g) the “members of the service staff” are the members of the staff of the mission in the domestic service of the mission;
- (h) a “private servant” is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;
- (i) the “premises of the mission” are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

## **Article 2**

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

## **Article 3**

1. The functions of a diplomatic mission consist, *inter alia*, in:
  - (a) representing the sending State in the receiving State;
  - (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
  - (c) negotiating with the Government of the receiving State;
  - (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
  - (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.
2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.



**Article 4**

1. The sending State must make certain that the *agrément* of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.
2. The receiving State is not obliged to give reasons to the sending State for a refusal of *agrément*.

**Article 5**

1. The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.
2. If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a charge d'affaires ad interim in each State where the head of mission has not his permanent seat.
3. A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization.

**Article 6**

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

**Article 7**

Subject to the provisions of Articles 5, 8, 9 and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attaches, the receiving State may require their names to be submitted beforehand, for its approval.

**Article 8**

1. Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.
2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.
3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

**Article 9**

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.
2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this Article, the receiving State may refuse to recognize the person concerned as a member of the mission.

**Article 10**

1. The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of:
  - (a) the appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;
  - (b) the arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;
  - (c) the arrival and final departure of private servants in the employ of persons referred to in sub-paragraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;
  - (d) the engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.
2. Where possible, prior notification of arrival and final departure shall also be given.

**Article 11**

1. In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.
2. The receiving State may equally, within similar bounds and on a nondiscriminatory basis, refuse to accept officials of a particular category.

**Article 12**

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

**Article 13**

1. The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.
2. The order of presentation of credentials or of a true copy thereof will be determined by the date and time of the arrival of the head of the mission.

**Article 14**

1. Heads of mission are divided into three classes, namely:
  - (a) that of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
  - (b) that of envoys, ministers and internuncios accredited to Heads of State;
  - (c) that of charges d'affaires accredited to Ministers for Foreign Affairs.
2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

**Article 15**

The class to which the heads of their missions are to be assigned shall be agreed between States.

**Article 16**

1. Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions in accordance with Article 13.
2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.
3. This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

**Article 17**

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

**Article 18**

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

**Article 19**

1. If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions, a charge d'affaires ad interim shall act provisionally as head of the mission. The name of the charge d'affaires ad interim shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.
2. In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

**Article 20**

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

**Article 21**

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.
2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

**Article 22**

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

#### **Article 23**

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

#### **Article 24**

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

#### **Article 25**

The receiving State shall accord full facilities for the performance of the functions of the mission.

#### **Article 26**

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

#### **Article 27**

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.
2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.
4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.
5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
6. The sending State or the mission may designate diplomatic couriers ad hoc. In such cases the provisions of paragraph 5 of this Article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.
7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

#### **Article 28**

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

#### **Article 29**

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

#### **Article 30**

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.
2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

#### **Article 31**

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

- a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
  - b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
  - c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.
2. A diplomatic agent is not obliged to give evidence as a witness.
  3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.
  4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

### **Article 32**

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.
2. Waiver must always be express.
3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.
4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

### **Article 33**

1. Subject to the provisions of paragraph 3 of this Article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.
2. The exemption provided for in paragraph 1 of this Article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:
  - a) that they are not nationals of or permanently resident in the receiving State;
  - and

- b) that they are covered by the social security provisions which may be in force in the sending State or a third State.
- 3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.
- 4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.
- 5. The provisions of this Article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

#### **Article 34**

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of Article 39;
- (d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

#### **Article 35**

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.



**Article 36**

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:
  - (a) articles for the official use of the mission;
  - (b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.
2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

**Article 37**

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.
2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.
3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.
4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

**Article 38**

1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.
2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

**Article 39**

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.
2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.
3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.
4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

**Article 40**

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State

shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.
3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.
4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to force majeure.

#### **Article 41**

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.
2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.
3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

#### **Article 42**

A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity.

#### **Article 43**

The function of a diplomatic agent comes to an end, *inter alia*:

- (a) on notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end;
- (b) on notification by the receiving State to the sending State that, in accordance with paragraph 2 of Article 9, it refuses to recognize the diplomatic agent as a member of the mission.

#### **Article 44**

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

#### **Article 45**

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

- (a) the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;
- (b) the sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;
- (c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

#### **Article 46**

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

#### **Article 47**

1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.
2. However, discrimination shall not be regarded as taking place:
  - (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;
  - (b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

**Article 48**

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

**Article 49**

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

**Article 50**

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in Article 48. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 51**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession

**Article 52**

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 48:

- (a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 48, 49 and 50;
- (b) of the date on which the present Convention will enter into force, in accordance with Article 51.

**Article 53**

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General

of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 48.

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

DONE at Vienna, this eighteenth day of April one thousand nine hundred and sixty-one.

# Vienna Regulation concerning the precedence of Diplomatic Agents 1815

**Regulation concerning the precedence of Diplomatic Agents, 19 March 1815,  
17<sup>th</sup> act adopted on Vienna Congress**

In order to prevent the inconveniences which have frequently occurred, and which might again arise, from claims of precedence among different diplomatic agents, the Plenipotentiaries of the Powers who signed the Treaty of Paris have agreed on the following Articles, and they think it their duty to invite the Plenipotentiaries of other crowned heads to adopt the same regulation:-

## **Article I**

Diplomatic Agents are divided into three classes: that of Ambassadors, Legates, or Nuncios; that of Envoys, Ministers, or other persons accredited to Sovereigns; that Chargés d'Affaires accredited to Ministers for Foreign Affairs.

## **Article II**

Ambassadors, Legates, or Nuncios, only, have the representative character.

## **Article III**

Diplomatic Agents on an extraordinary mission have not, on that account, any superiority of rank.

## **Article IV**

Diplomatic Agents shall take precedence in their respective classes, according to the date of the original notification of their arrival. The present regulation shall not cause any innovation with regard to the representatives of the Pope.

**Article V**

A uniform mode shall be determined in each State for the reception of Diplomatic Agents of each class.

**Article VI**

Relations of consanguinity, or of family alliance between Courts, confer no precedence on their Diplomatic Agents. The same rule also applies to political alliances.

**Article VII**

In Acts or Treaties between several Powers which grant alternate precedence, the order which is to be observed in the signatures shall be decided by lot between the Ministers.



# Vienna Convention on Consular Relations 1963

The States Parties to the present Convention,

*Recalling* that consular relations have been established between peoples since ancient times,

*Having in mind* the Purposes and Principles of the Charter of the United Nation concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

*Considering* that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations which was opened for signature on 18 April 1961,

*Believing* that an international convention on consular relations, privileges and immunities would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

*Realizing* that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States,

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

*Have agreed* as follows:

## **Article 1. Definitions**

1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:
  - (a) “consular post” means any consulate-general, consulate, vice-consulate or consular agency;

- (b) “consular district” means the area assigned to a consular post for the exercise of consular functions;
  - (c) “head of consular post” means the person charged with the duty of acting in that capacity;
  - (d) “consular officer” means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;
  - (e) “consular employee” means any person employed in the administrative or technical service of a consular post;
  - (f) “member of the service staff” means any person employed in the domestic service of a consular post;
  - (g) “members of the consular post” means consular officers, consular employees and members of the service staff;
  - (h) “members of the consular staff” means consular officers, other than the head of a consular post, consular employees and members of the service staff;
  - (i) “member of the private staff” means a person who is employed exclusively in the private service of a member of the consular post;
  - (j) “consular premises” means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;
  - (k) “consular archives” includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safekeeping.
2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers; the provisions of Chapter III govern consular posts headed by honorary consular officers.
  3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by Article 71 of the present Convention.

## **CHAPTER I CONSULAR RELATIONS IN GENERAL**

### **SECTION I ESTABLISHMENT AND CONDUCT OF CONSULAR RELATIONS**

#### **Article 2. Establishment of consular relations**

1. The establishment of consular relations between States takes place by mutual consent.

2. The consent given to the establishment of diplomatic relations between two States implies, unless otherwise stated, consent to the establishment of consular relations.
3. The severance of diplomatic relations shall not ipso facto involve the severance of consular relations.

### **Article 3. Exercise of consular functions**

Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present Convention.

### **Article 4. Establishment of a consular post**

1. A consular post may be established in the territory of the receiving State only with that State's consent.
2. The seat of the consular post, its classification and the consular district shall be established by the sending State and shall be subject to the approval of the receiving State.
3. Subsequent changes in the seat of the consular post, its classification or the consular district may be made by the sending State only with the consent of the receiving State.
4. The consent of the receiving State shall also be required if a consulate-general or a consulate desires to open a vice-consulate or a consular agency in a locality other than that in which it is itself established.
5. The prior express consent of the receiving State shall also be required for the opening of an office forming part of an existing consular post elsewhere than at the seat thereof.

### **Article 5. Consular functions**

Consular functions consist in:

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;

- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession *mortis causa* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
- (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;
- (l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;
- (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to

which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

#### **Article 6. Exercise of consular functions outside the consular district**

A consular officer may, in special circumstances, with the consent of the receiving State, exercise his functions outside his consular district.

#### **Article 7. Exercise of consular functions in a third state**

The sending State may, after notifying the States concerned, entrust a consular post established in a particular State with the exercise of consular functions in another State, unless there is express objection by one of the States concerned.

#### **Article 8. Exercise of consular functions on behalf of a third state**

Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.

#### **Article 9. Classes of heads of consular posts**

1. Heads of consular posts are divided into four classes, namely:
  - (a) consuls-general;
  - (b) consuls;
  - (c) vice-consuls;
  - (d) consular agents.
2. Paragraph 1 of this Article in no way restricts the right of any of the Contracting Parties to fix the designation of consular officers other than the heads of consular posts.

#### **Article 10. Appointment and admission of heads of consular posts**

1. Heads of consular posts are appointed by the sending State and are admitted to the exercise of their functions by the receiving State.
2. Subject to the provisions of the present Convention, the formalities for the appointment and for the admission of the head of a consular post are determined by the laws, regulations and usages of the sending State and of the receiving State respectively.

**Article 11. The consular commission or notification of appointment**

1. The head of a consular post shall be provided by the sending State with a document, in the form of a commission or similar instrument, made out for each appointment, certifying his capacity and showing, as a general rule, his full name, his category and class, the consular district and the seat of the consular post.
2. The sending State shall transmit the commission or similar instrument through the diplomatic or other appropriate channel to the Government of the State in whose territory the head of a consular post is to exercise his functions.
3. If the receiving State agrees, the sending State may, instead of a commission or similar instrument, send to the receiving State a notification containing the particulars required by paragraph 1 of this Article.

**Article 12. The exequatur**

1. The head of a consular post is admitted to the exercise of his functions by an authorization from the receiving State termed an exequatur, whatever the form of this authorization.
2. A State which refuses to grant an exequatur is not obliged to give to the sending State reasons for such refusal.
3. Subject to the provisions of Articles 13 and 15, the head of a consular post shall not enter upon his duties until he has received an exequatur.

**Article 13. Provisional admission of heads of consular posts**

Pending delivery of the exequatur, the head of a consular post may be admitted on a provisional basis to the exercise of his functions. In that case, the provisions of the present Convention shall apply.

**Article 14. Notification to the authorities of the consular district**

As soon as the head of a consular post is admitted even provisionally to the exercise of his functions, the receiving State shall immediately notify the competent authorities of the consular district. It shall also ensure that the necessary measures are taken to enable the head of a consular post to carry out the duties of his office and to have the benefit of the provisions of the present Convention.

**Article 15. Temporary exercise of the functions of the head of a consular post**

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.

2. The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.
3. The competent authorities of the receiving State shall afford assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.
4. When, in the circumstances referred to in paragraph 1 of this Article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State is designated by the sending State as an acting head of post, he shall, if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

#### **Article 16. Precedence as between heads of consular posts**

1. Heads of consular posts shall rank in each class according to the date of the grant of the *exequatur*.
2. If, however, the head of a consular post before obtaining the *exequatur* is admitted to the exercise of his functions provisionally, his precedence shall be determined according to the date of the provisional admission; this precedence shall be maintained after the granting of the *exequatur*.
3. The order of precedence as between two or more heads of consular posts who obtained the *exequatur* or provisional admission on the same date shall be determined according to the dates on which their commissions or similar instruments or the notifications referred to in paragraph 3 of Article 11 were presented to the receiving State.
4. Acting heads of posts shall rank after all heads of consular posts and, as between themselves, they shall rank according to the dates on which they assumed their functions as acting heads of posts as indicated in the notifications given under paragraph 2 of Article 15.

5. Honorary consular officers who are heads of consular posts shall rank in each class after career heads of consular posts, in the order and according to the rules laid down in the foregoing paragraphs.
6. Heads of consular posts shall have precedence over consular officers not having that status.

#### **Article 17. Performance of diplomatic acts by consular officers**

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.
2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

#### **Article 18. Appointment of the same person by two or more States as a consular officer**

Two or more States may, with the consent of the receiving State, appoint the same person as a consular officer in that State.

#### **Article 19. Appointment of members of consular staff**

1. Subject to the provisions of Articles 20, 22 and 23, the sending State may freely appoint the members of the consular staff.
2. The full name, category and class of all consular officers, other than the head of a consular post, shall be notified by the sending State to the receiving State in sufficient time for the receiving State, if it so wishes, to exercise its rights under paragraph 3 of Article 23.
3. The sending State may, if required by its laws and regulations, request the receiving State to grant an exequatur to a consular officer other than the head of a consular post.
4. The receiving State may, if required by its laws and regulations, grant an exequatur to a consular officer other than the head of a consular post.



**Article 20. Size of the consular staff**

In the absence of an express agreement as to the size of the consular staff, the receiving State may require that the size of the staff be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the consular district and to the needs of the particular post.

**Article 21. Precedence as between consular officers of a consular post**

The order of precedence as between the consular officers of a consular post and any change thereof shall be notified by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

**Article 22. Nationality of consular officers**

1. Consular officers should, in principle, have the nationality of the sending State.
2. Consular officers may not be appointed from among persons having the nationality of the receiving State except with the express consent of that State which may be withdrawn at any time.
3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

**Article 23. Persons declared “non grata”**

1. The receiving State may at any time notify the sending State that a consular officer is *persona non grata* or that any other member of the consular staff is not acceptable. In that event, the sending State shall, as the case may be, either recall the person concerned or terminate his functions with the consular post.
2. If the sending State refuses or fails within a reasonable time to carry out its obligations under paragraph 1 of this Article, the receiving State may, as the case may be, either withdraw the *exequatur* from the person concerned or cease to consider him as a member of the consular staff.
3. A person appointed as a member of a consular post may be declared unacceptable before arriving in the territory of the receiving State or, if already in the receiving State, before entering on his duties with the consular post. In any such case, the sending State shall withdraw his appointment.
4. In the cases mentioned in paragraphs 1 and 3 of this Article, the receiving State is not obliged to give to the sending State reasons for its decision.

**Article 24. Notification to the receiving state of appointments, arrivals and departures**

1. The Ministry for Foreign Affairs of the receiving State or the authority designated by that Ministry shall be notified of:
  - (a) the appointment of members of a consular post, their arrival after appointment to the consular post, their final departure or the termination of their functions and any other changes affecting their status that may occur in the course of their service with the consular post;
  - (b) the arrival and final departure of a person belonging to the family of a member of a consular post forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;
  - (c) the arrival and final departure of members of the private staff and, where appropriate, the termination of their service as such;
  - (d) the engagement and discharge of persons resident in the receiving State as members of a consular post or as members of the private staff entitled to privileges and immunities.
2. When possible, prior notification of arrival and final departure shall also be given.

**SECTION II  
END OF CONSULAR FUNCTIONS****Article 25. Termination of the functions of a member of a consular post**

The functions of a member of a consular post shall come to an end *inter alia*:

- (a) on notification by the sending State to the receiving State that his functions have come to an end;
- (b) on withdrawal of the *exequatur*;
- (c) on notification by the receiving State to the sending State that the receiving State has ceased to consider him as a member of the consular staff.

**Article 26. Departure from the territory of the receiving State**

The receiving State shall, even in case of armed conflict, grant to members of the consular post and members of the private staff, other than nationals of the receiving State, and to members of their families forming part of their households irrespective of nationality, the necessary time and facilities to enable them to prepare their departure and to leave at the earliest possible moment after the termination of the functions of the members concerned. In particular, it shall, in case of need, place at their disposal the necessary means of transport for themselves and their property other than property acquired in the receiving State the export of which is prohibited at the time of departure.

**Article 27. Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances**

1. In the event of the severance of consular relations between two States:
  - (a) the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives;
  - (b) the sending State may entrust the custody of the consular premises, together with the property contained therein and the consular archives, to a third State acceptable to the receiving State;
  - (c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.
2. In the event of the temporary or permanent closure of a consular post, the provisions of subparagraph (a) of paragraph 1 of this Article shall apply. In addition,
  - (a) if the sending State, although not represented in the receiving State by a diplomatic mission, has another consular post in the territory of that State, that consular post may be entrusted with the custody of the premises of the consular post which has been closed, together with the property contained therein and the consular archives, and, with the consent of the receiving State, with the exercise of consular functions in the district of that consular post; or
  - (b) if the sending State has no diplomatic mission and no other consular post in the receiving State, the provisions of subparagraphs (b) and (c) of paragraph 1 of this Article shall apply.

**CHAPTER II  
FACILITIES, PRIVILEGES AND IMMUNITIES  
RELATING TO CONSULAR POSTS, CAREER  
CONSULAR OFFICERS AND OTHER MEMBERS OF  
A CONSULAR POST**

**SECTION I  
FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO  
A CONSULAR POST**

**Article 28. Facilities for the work of the consular post**

The receiving State shall accord full facilities for the performance of the functions of the consular post.

**Article 29. use of national flag and coat-of-arms**

1. The sending State shall have the right to the use of its national flag and coat-of-arms in the receiving State in accordance with the provisions of this Article.
2. The national flag of the sending State may be flown and its coat-of-arms displayed on the building occupied by the consular post and at the entrance door thereof, on the residence of the head of the consular post and on his means of transport when used on official business.
3. In the exercise of the right accorded by this Article regard shall be had to the laws, regulations and usages of the receiving State.

**Article 30. Accommodation**

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the sending State of premises necessary for its consular post or assist the latter in obtaining accommodation in some other way.
2. It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

**Article 31. Inviolability of the consular premises**

1. Consular premises shall be inviolable to the extent provided in this Article.
2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.
3. Subject to the provisions of paragraph 2 of this Article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.
4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

**Article 32. Exemption from taxation of consular premises**

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

**Article 33. Inviolability of the consular archives and documents**

The consular archives and documents shall be inviolable at all times and wherever they may be.

**Article 34. Freedom of movement**

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the consular post.

**Article 35. Freedom of communication**

1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.
2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.
3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.
4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
6. The sending State, its diplomatic missions and its consular posts may designate consular couriers ad hoc. In such cases the provisions of paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.
7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

### **Article 36. Communication and contact with nationals of the sending State**

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
  - (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
  - (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;
  - (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall

refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

### **Article 37. Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents**

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

- (a) in the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;
- (b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;
- (c) if a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.

### **Article 38. Communication with the authorities of the receiving State**

In the exercise of their functions, consular officers may address:

- (a) the competent local authorities of their consular district;
- (b) the competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.

### **Article 39. Consular fees and charges**

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.
2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

**SECTION II**  
**FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO**  
**CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF**  
**A CONSULAR POST**

**Article 40. Protection of consular officers**

The receiving State shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

**Article 41. Personal inviolability of consular officers**

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.
2. Except in the case specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.
3. If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this Article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this Article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

**Article 42. Notification of arrest, detention or prosecution**

In the event of the arrest or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against him, the receiving State shall promptly notify the head of the consular post. Should the latter be himself the object of any such measure, the receiving State shall notify the sending State through the diplomatic channel.

**Article 43. Immunity from jurisdiction**

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.
2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either:



- (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
- (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

#### **Article 44. Liability to give evidence**

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.
2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.
3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

#### **Article 45. Waiver of privileges and immunities**

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43 and 44.
2. The waiver shall in all cases be express, except as provided in paragraph 3 of this Article, and shall be communicated to the receiving State in writing.
3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.
4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

#### **Article 46. Exemption from registration of aliens and residence permits**

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws

and regulations of the receiving State in regard to the registration of aliens and residence permits.

2. The provisions of paragraph 1 of this Article shall not, however, apply to any consular employee who is not a permanent employee of the sending State or who carries on any private gainful occupation in the receiving State or to any member of the family of any such employee.

#### **Article 47. Exemption from work permits**

1. Members of the consular post shall, with respect to services rendered for the sending State, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour.
2. Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving State, be exempt from the obligations referred to in paragraph 1 of this Article.

#### **Article 48. Social security exemption**

1. Subject to the provisions of paragraph 3 of this Article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.
2. The exemption provided for in paragraph 1 of this Article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:
  - (a) that they are not nationals of or permanently resident in the receiving State; and
  - (b) that they are covered by the social security provisions which are in force in the sending State or a third State.
3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.
4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

**Article 49. Exemption from taxation**

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:
  - (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
  - (b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32;
  - (c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of Article 51; (d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;
  - (d) charges levied for specific services rendered;
  - (e) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.
2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.
3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

**Article 50. Exemption from customs duties and inspection**

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:
  - (a) articles for the official use of the consular post;
  - (b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.
2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.
3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be

inspected only if there is serious reason to believe that it contains articles other than those referred to in subparagraph (b) of paragraph 1 of this Article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

#### **Article 51. Estate of a member of the consular post or of a member of his family**

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State:

- (a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;
- (b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

#### **Article 52. Exemption from personal services and contributions**

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

#### **Article 53. Beginning and end of consular privileges and immunities**

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.
2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.
3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment

when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this Article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

4. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.
5. In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

#### **Article 54. Obligations of third States**

1. If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.
2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.
3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.
4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to force majeure.

**Article 55. Respect for the laws and regulations of the receiving State**

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.
2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.
3. The provisions of paragraph 2 of this Article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

**Article 56. Insurance against third party risks**

Members of the consular post shall comply with any requirement imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

**Article 57. Special provisions concerning private gainful occupation**

1. Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.
2. Privileges and immunities provided in this Chapter shall not be accorded:
  - (a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;
  - (b) to members of the family of a person referred to in subparagraph (a) of this paragraph or to members of his private staff;
  - (c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

### **CHAPTER III REGIME RELATING TO HONORARY CONSULAR OFFICERS AND CONSULAR POSTS HEADED BY SUCH OFFICERS**

**Article 58. General provisions relating to facilities, privileges and immunities**

1. Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular

officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 59, 60, 61 and 62.

2. Articles 42 and 43, paragraph 3 of Article 44, Articles 45 and 53 and paragraph 1 of Article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles 63, 64, 65, 66 and 67.
3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.
4. The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.

#### **Article 59. Protection of the consular premises**

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

#### **Article 60. Exemption from taxation of consular premises**

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

#### **Article 61. Inviolability of consular archives and documents**

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

#### **Article 62. Exemption from customs duties**

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related

charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

#### **Article 63. Criminal proceedings**

If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

#### **Article 64. Protection of honorary consular officers**

The receiving State is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position.

#### **Article 65. Exemption from registration of aliens and residence permits**

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

#### **Article 66. Exemption from taxation**

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

#### **Article 67. Exemption from personal services and contributions**

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

#### **Article 68. Optional character of the institution of honorary consular officers**

Each State is free to decide whether it will appoint or receive honorary consular officers.



## **CHAPTER IV GENERAL PROVISIONS**

### **Article 69. Consular agents who are not heads of consular posts**

1. Each State is free to decide whether it will establish or admit consular agencies conducted by consular agents not designated as heads of consular post by the sending State.
2. The conditions under which the consular agencies referred to in paragraph 1 of this Article may carry on their activities and the privileges and immunities which may be enjoyed by the consular agents in charge of them shall be determined by agreement between the sending State and the receiving State.

### **Article 70. Exercise of consular functions by diplomatic missions**

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.
2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.
3. In the exercise of consular functions a diplomatic mission may address:
  - (a) the local authorities of the consular district;
  - (b) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.
4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

### **Article 71. Nationals or permanent residents of the receiving State**

1. Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in Article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.

2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.

#### **Article 72. Non-discrimination**

1. In the application of the provisions of the present Convention the receiving State shall not discriminate as between States.
2. However, discrimination shall not be regarded as taking place:
  - (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its consular posts in the sending State;
  - (b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

#### **Article 73. Relationship between the present convention and other international agreements**

1. The provisions of the present Convention shall not affect other international agreements in force as between States parties to them.
2. Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof.

## **CHAPTER V FINAL PROVISIONS**

#### **Article 74. Signature**

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows until 31 October 1963 at the

Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

#### **Article 75. Ratification**

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

#### **Article 76. Accession**

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in Article 74. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 77. Entry into force**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### **Article 78. Notifications by the Secretary-General**

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 74:

- (a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 74, 75 and 76;
- (b) of the date on which the present Convention will enter into force, in accordance with Article 77.

#### **Article 79. Authentic texts**

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 74.

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

DONE at Vienna, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

**OPTIONAL PROTOCOL TO THE VIENNA  
CONVENTION ON CONSULAR RELATIONS  
CONCERNING ACQUISITION OF NATIONALITY.  
DONE AT VIENNA, ON 24 APRIL 1963**

The States Parties to the present Protocol and to the Vienna Convention on Consular Relations, hereinafter referred to as “the Convention”, adopted by the United Nations Conference held at Vienna from 4 March to 22 April 1963,

Expressing their wish to establish rules between them concerning acquisition of nationality by members of the consular post and by members of their families forming part of their households,

Have agreed as follows:

**Article I**

For the purposes of the present Protocol, the expression “members of the consular post” shall have the meaning assigned to it in subparagraph (g) of paragraph 1 of Article 1 of the Convention, namely, “consular officers, consular employees and members of the service staff”.

**Article II**

Members of the consular post not being nationals of the receiving State, and members of their families forming part of their households, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State.

**Article III**

The present Protocol shall be open for signature by all States which may become Parties to the Convention, as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

**Article IV**

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

**Article V**

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

## Article VI

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification of or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.
2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this Article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

## Article VII

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

- (a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with Articles III, IV and V;
- (b) of the date on which the present Protocol will enter into force, in accordance with Article VI.

## Article VIII

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

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

DONE at Vienna, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

# **OPTIONAL PROTOCOL TO THE VIENNA CONVENTION ON CONSULAR RELATIONS CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES. DONE AT VIENNA, ON 24 APRIL 1963**

The States Parties to the present Protocol and to the Vienna Convention on Consular Relations, hereinafter referred to as “the Convention”, adopted by the United Nations Conference held at Vienna from 4 March to 22 April 1963,

Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the com-

pulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period,

Have agreed as follows:

### **Article I**

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

### **Article II**

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

### **Article III**

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.
2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

### **Article IV**

States Parties to the Convention, to the Optional Protocol concerning Acquisition of Nationality, and to the present Protocol may at any time declare that they will extend the provisions of the present Protocol to disputes arising out of the interpretation or application of the Optional Protocol concerning Acquisition of Nationality. Such declarations shall be notified to the Secretary-General of the United Nations.

### **Article V**

The present Protocol shall be open for signature by all States which may become Parties to the Convention as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

## **Article VI**

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

## **Article VII**

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

## **Article VIII**

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.
2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this Article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

## **Article IX**

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

- (a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with Articles V, VI and VII;
- (b) of declarations made in accordance with Article IV of the present Protocol;
- (c) of the date on which the present Protocol will enter into force, in accordance with Article VIII.

## **Article X**

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

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Protocol.

DONE at Vienna, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

# United Nations Convention on the Law of the Sea 1982

## *The States Parties to this Convention*

*Prompted* by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world,

*Noting* that developments since the United Nations Conferences on the Law of the Sea held at Geneva in 1958 and 1960 have accentuated the need for a new and generally acceptable Convention on the law of the sea,

*Conscious* that the problems of ocean space are closely interrelated and need to be considered as a whole,

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

*Bearing in mind* that the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked,

*Desiring* by this Convention to develop the principles embodied in resolution 2749 (XXV) of 17 December 1970 in which the General Assembly of the United Nations solemnly declared *inter alia* that the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States,



*Believing* that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter,

*Affirming* that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,

*Have agreed* as follows:

## **Part I**

### **Introduction**

#### **Article 1. Use of terms and scope**

1. For the purposes of this Convention:
  - (1) “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;
  - (2) “Authority” means the International Seabed Authority;
  - (3) “activities in the Area” means all activities of exploration for, and exploitation of, the resources of the Area;
  - (4) “pollution of the marine environment” means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;
  - (5) (a) “dumping” means:
    - (i) any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
    - (ii) any deliberate disposal of vessels, aircraft, platforms or other man-made structures at sea;
  - (b) “dumping” does not include:
    - (i) the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;

- (ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.
2. (1) “States Parties” means States which have consented to be bound by this Convention and for which this Convention is in force.
- (2) This Convention applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1(b), (c), (d), (e) and (f), which become Parties to this Convention in accordance with the conditions relevant to each, and to that extent “States Parties” refers to those entities.

## **Part II**

### **Territorial sea and contiguous zone**

#### **Section 1**

#### **General Provisions**

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

1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.
2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.
3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

#### **Section 2**

#### **Limits of the territorial sea**

#### **Article 3. Breadth of the territorial sea**

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

#### **Article 4. Outer limit of the territorial sea**

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

### **Article 5. Normal baseline**

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

### **Article 6. Reefs**

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

### **Article 7. Straight baselines**

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.
2. Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.
3. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.
4. Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.
5. Where the method of straight baselines is applicable under paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage.
6. The system of straight baselines may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone.

**Article 8. Internal waters**

1. Except as provided in Part IV, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.
2. Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.

**Article 9. Mouths of rivers**

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

**Article 10. Bays**

1. This article relates only to bays the coasts of which belong to a single State.
2. For the purposes of this Convention, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.
3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.
4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.
5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 nautical miles, a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.
6. The foregoing provisions do not apply to so-called “historic” bays, or in any case where the system of straight baselines provided for in article 7 is applied.

**Article 11. Ports**

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

**Article 12. Roadsteads**

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

**Article 13. Low-tide elevations**

1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.
2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

**Article 14. Combination of methods for determining baselines**

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

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

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

**Article 16. Charts and lists of geographical coordinates**

1. The baselines for measuring the breadth of the territorial sea determined in accordance with articles 7, 9 and 10, or the limits derived therefrom, and the lines of delimitation drawn in accordance with articles 12 and 15 shall be shown on charts

of a scale or scales adequate for ascertaining their position. Alternatively, a list of geographical coordinates of points, specifying the geodetic datum, may be substituted.

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

### **Section 3** **Innocent passage in the territorial sea**

#### **Subsection A** **Rules applicable to all ships**

##### **Article 17. Right of innocent passage**

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

##### **Article 18. Meaning of passage**

1. Passage means navigation through the territorial sea for the purpose of:
  - (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
  - (b) proceeding to or from internal waters or a call at such roadstead or port facility.
2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

##### **Article 19. Meaning of innocent passage**

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.
2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:
  - (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
  - (b) any exercise or practice with weapons of any kind;

- (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;
- (d) any act of propaganda aimed at affecting the defence or security of the coastal State;
- (e) the launching, landing or taking on board of any aircraft;
- (f) the launching, landing or taking on board of any military device;
- (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
- (h) any act of wilful and serious pollution contrary to this Convention;
- (i) any fishing activities;
- (j) the carrying out of research or survey activities;
- (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
- (l) any other activity not having a direct bearing on passage.

#### **Article 20. Submarines and other underwater vehicles**

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

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

1. The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:
  - (a) the safety of navigation and the regulation of maritime traffic;
  - (b) the protection of navigational aids and facilities and other facilities or installations;
  - (c) the protection of cables and pipelines;
  - (d) the conservation of the living resources of the sea;
  - (e) the prevention of infringement of the fisheries laws and regulations of the coastal State;
  - (f) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
  - (g) marine scientific research and hydrographic surveys;
  - (h) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.

2. Such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.
3. The coastal State shall give due publicity to all such laws and regulations.
4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

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

1. The coastal State may, where necessary having regard to the safety of navigation, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships.
2. In particular, tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to confine their passage to such sea lanes.
3. In the designation of sea lanes and the prescription of traffic separation schemes under this article, the coastal State shall take into account:
  - (a) the recommendations of the competent international organization;
  - (b) any channels customarily used for international navigation;
  - (c) the special characteristics of particular ships and channels; and
  - (d) the density of traffic.
4. The coastal State shall clearly indicate such sea lanes and traffic separation schemes on charts to which due publicity shall be given.

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

Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements.

#### **Article 24. Duties of the coastal State**

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



- (a) impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage; or
  - (b) discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State.
2. The coastal State shall give appropriate publicity to any danger to navigation, of which it has knowledge, within its territorial sea.

#### **Article 25. Rights of protection of the coastal State**

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.
2. In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State also has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.
3. The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published.

#### **Article 26. Charges which may be levied upon foreign ships**

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.
2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

### **Subsection B**

#### **Rules applicable to merchant ships and government ships operated for commercial purposes**

#### **Article 27. Criminal jurisdiction on board a foreign ship**

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

- (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
  - (c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
  - (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.
2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.
3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the master so requests, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.
4. In considering whether or in what manner an arrest should be made, the local authorities shall have due regard to the interests of navigation.
5. Except as provided in Part XII or with respect to violations of laws and regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

#### **Article 28. Civil jurisdiction in relation to foreign ships**

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.
2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.
3. Paragraph 2 is without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

### **Subsection C**

#### **Rules applicable to warships and other government ships operated for non-commercial purposes**

##### **Article 29. Definition of warships**

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

##### **Article 30. Non-compliance by warships with the laws and regulations of the coastal State**

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

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

The flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea or with the provisions of this Convention or other rules of international law.

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

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

### **Section 4**

#### **Contiguous zone**

##### **Article 33. Contiguous zone**

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:
  - (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;

- (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.
2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

## **Part III**

### **Straits used for international navigation**

#### **Section 1**

#### **General Provisions**

#### **Article 34. Legal status of waters forming straits used for international navigation**

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

#### **Article 35. Scope of this Part**

Nothing in this Part affects:

- (a) any areas of internal waters within a strait, except where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such;
- (b) the legal status of the waters beyond the territorial seas of States bordering straits as exclusive economic zones or high seas; or
- (c) the legal regime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits.

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

This Part does not apply to a strait used for international navigation if there exists through the strait a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics; in such routes, the other relevant Parts of this Convention, including the provisions regarding the freedoms of navigation and overflight, apply.

## Section 2 Transit passage

### Article 37. Scope of this section

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

### Article 38. Right of transit passage

1. In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.
2. Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.
3. Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention.

### Article 39. Duties of ships and aircraft during transit passage

1. Ships and aircraft, while exercising the right of transit passage, shall:
  - (a) proceed without delay through or over the strait;
  - (b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
  - (c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by *force majeure* or by distress;
  - (d) comply with other relevant provisions of this Part.
2. Ships in transit passage shall:

- (a) comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea;
  - (b) comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.
3. Aircraft in transit passage shall:
- (a) observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;
  - (b) at all times monitor the radio frequency assigned by the competent internationally designated air traffic control authority or the appropriate international distress radio frequency.

#### **Article 40. Research and survey activities**

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

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

1. In conformity with this Part, States bordering straits may designate sea lanes and prescribe traffic separation schemes for navigation in straits where necessary to promote the safe passage of ships.
2. Such States may, when circumstances require, and after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by them.
3. Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.
4. Before designating or substituting sea lanes or prescribing or substituting traffic separation schemes, States bordering straits shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the States bordering the straits, after which the States may designate, prescribe or substitute them.
5. In respect of a strait where sea lanes or traffic separation schemes through the waters of two or more States bordering the strait are being proposed, the States

concerned shall cooperate in formulating proposals in consultation with the competent international organization.

6. States bordering straits shall clearly indicate all sea lanes and traffic separation schemes designated or prescribed by them on charts to which due publicity shall be given.
7. Ships in transit passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

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

1. Subject to the provisions of this section, States bordering straits may adopt laws and regulations relating to transit passage through straits, in respect of all or any of the following:
  - (a) the safety of navigation and the regulation of maritime traffic, as provided in article 41;
  - (b) the prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait;
  - (c) with respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;
  - (d) the loading or unloading of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary laws and regulations of States bordering straits.
2. Such laws and regulations shall not discriminate in form or in fact among foreign ships or in their application have the practical effect of denying, hampering or impairing the right of transit passage as defined in this section.
3. States bordering straits shall give due publicity to all such laws and regulations.
4. Foreign ships exercising the right of transit passage shall comply with such laws and regulations.
5. The flag State of a ship or the State of registry of an aircraft entitled to sovereign immunity which acts in a manner contrary to such laws and regulations or other provisions of this Part shall bear international responsibility for any loss or damage which results to States bordering straits.

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

User States and States bordering a strait should by agreement cooperate:

- (a) in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation; and
- (b) for the prevention, reduction and control of pollution from ships.

**Article 44. Duties of States bordering straits**

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

**Section 3  
Innocent passage****Article 45. Innocent passage**

1. The regime of innocent passage, in accordance with Part II, section 3, shall apply in straits used for international navigation:
  - (a) excluded from the application of the regime of transit passage under article 38, paragraph 1; or
  - (b) between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign State.
2. There shall be no suspension of innocent passage through such straits.

**Part IV  
Archipelagic States****Article 46. Use of terms**

For the purposes of this Convention:

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



**Article 47. Archipelagic baselines**

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.
2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.
3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.
4. Such baselines shall not be drawn to and from low-tide elevations, unless light-houses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.
5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.
6. If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.
7. For the purpose of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.
8. The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted.
9. The archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

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

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

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

1. The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast.
2. This sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.
3. This sovereignty is exercised subject to this Part.
4. The regime of archipelagic sea lanes passage established in this Part shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein.

**Article 50. Delimitation of internal waters**

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

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

1. Without prejudice to article 49, an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them. Such rights shall not be transferred to or shared with third States or their nationals.
2. An archipelagic State shall respect existing submarine cables laid by other States and passing through its waters without making a landfall. An archipelagic State shall permit the maintenance and replacement of such cables upon receiving due notice of their location and the intention to repair or replace them.

**Article 52. Right of innocent passage**

1. Subject to article 53 and without prejudice to article 50, ships of all States enjoy the right of innocent passage through archipelagic waters, in accordance with Part II, section 3.
2. The archipelagic State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its archipelagic waters the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

**Article 53. Right of archipelagic sea lanes passage**

1. An archipelagic State may designate sea lanes and air routes thereabove, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.
2. All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes.
3. Archipelagic sea lanes passage means the exercise in accordance with this Convention of the rights of navigation and overflight in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.
4. Such sea lanes and air routes shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all normal navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary.
5. Such sea lanes and air routes shall be defined by a series of continuous axis lines from the entry points of passage routes to the exit points. Ships and aircraft in archipelagic sea lanes passage shall not deviate more than 25 nautical miles to either side of such axis lines during passage, provided that such ships and aircraft shall not navigate closer to the coasts than 10 per cent of the distance between the nearest points on islands bordering the sea lane.
6. An archipelagic State which designates sea lanes under this article may also prescribe traffic separation schemes for the safe passage of ships through narrow channels in such sea lanes.

7. An archipelagic State may, when circumstances require, after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by it.
8. Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.
9. In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them.
10. The archipelagic State shall clearly indicate the axis of the sea lanes and the traffic separation schemes designated or prescribed by it on charts to which due publicity shall be given.
11. Ships in archipelagic sea lanes passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.
12. If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

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

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

## **Part V Exclusive economic zone**

**Article 55. Specific legal regime of the exclusive economic zone**

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

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

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

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
  - (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
    - (i) the establishment and use of artificial islands, installations and structures;
    - (ii) marine scientific research;
    - (iii) the protection and preservation of the marine environment;
  - (c) other rights and duties provided for in this Convention.
2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.
  3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.

#### **Article 57. Breadth of the exclusive economic zone**

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

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

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.
2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.
3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

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

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

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

1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:
  - (a) artificial islands;
  - (b) installations and structures for the purposes provided for in article 56 and other economic purposes;
  - (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.
2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.
3. Due notice must be given of the construction of such artificial islands, installations or structures, and permanent means for giving warning of their presence must be maintained. Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.
4. The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.
5. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres

around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones.

6. All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.
7. Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.
8. Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

#### **Article 61. Conservation of the living resources**

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.
2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.
3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.
4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.
5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subre-

gional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

#### **Article 62. Utilization of the living resources**

1. The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.
2. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.
3. In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, *inter alia*, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.
4. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, *inter alia*, to the following:
  - (a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;
  - (b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;
  - (c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;
  - (d) fixing the age and size of fish and other species that may be caught;
  - (e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;



- (f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;
  - (g) the placing of observers or trainees on board such vessels by the coastal State;
  - (h) the landing of all or any part of the catch by such vessels in the ports of the coastal State;
  - (i) terms and conditions relating to joint ventures or other cooperative arrangements;
  - (j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;
  - (k) enforcement procedures.
5. Coastal States shall give due notice of conservation and management laws and regulations.

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

1. Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.
2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.

**Article 64. Highly migratory species**

1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I<sup>1</sup> shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose

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<sup>1</sup>See: p. 382.

nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.

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

#### **Article 65. Marine mammals**

Nothing in this Part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. States shall cooperate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study.

#### **Article 66. Anadromous stocks**

1. States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks.
2. The State of origin of anadromous stocks shall ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landward of the outer limits of its exclusive economic zone and for fishing provided for in paragraph 3(b). The State of origin may, after consultations with the other States referred to in paragraphs 3 and 4 fishing these stocks, establish total allowable catches for stocks originating in its rivers.
3. (a) Fisheries for anadromous stocks shall be conducted only in waters landward of the outer limits of exclusive economic zones, except in cases where this provision would result in economic dislocation for a State other than the State of origin. With respect to such fishing beyond the outer limits of the exclusive economic zone, States concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing giving due regard to the conservation requirements and the needs of the State of origin in respect of these stocks.  
(b) The State of origin shall cooperate in minimizing economic dislocation in such other States fishing these stocks, taking into account the normal catch and the mode of operations of such States, and all the areas in which such fishing has occurred.  
(c) States referred to in subparagraph (b), participating by agreement with the State of origin in measures to renew anadromous stocks, particularly by expenditures for that purpose, shall be given special consideration by the State of origin in the harvesting of stocks originating in its rivers.  
(d) Enforcement of regulations regarding anadromous stocks beyond the exclusive economic zone shall be by agreement between the State of origin and the other States concerned.

4. In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, such State shall cooperate with the State of origin with regard to the conservation and management of such stocks.
5. The State of origin of anadromous stocks and other States fishing these stocks shall make arrangements for the implementation of the provisions of this article, where appropriate, through regional organizations.

#### **Article 67. Catadromous species**

1. A coastal State in whose waters catadromous species spend the greater part of their life cycle shall have responsibility for the management of these species and shall ensure the ingress and egress of migrating fish.
2. Harvesting of catadromous species shall be conducted only in waters landward of the outer limits of exclusive economic zones. When conducted in exclusive economic zones, harvesting shall be subject to this article and the other provisions of this Convention concerning fishing in these zones.
3. In cases where catadromous fish migrate through the exclusive economic zone of another State, whether as juvenile or maturing fish, the management, including harvesting, of such fish shall be regulated by agreement between the State mentioned in paragraph 1 and the other State concerned. Such agreement shall ensure the rational management of the species and take into account the responsibilities of the State mentioned in paragraph 1 for the maintenance of these species.

#### **Article 68. Sedentary species**

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

#### **Article 69. Right of land-locked States**

1. Land-locked States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.
2. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, *inter alia*:
  - (a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;

- (b) the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;
  - (c) the extent to which other land-locked States and geographically disadvantaged States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;
  - (d) the nutritional needs of the populations of the respective States.
3. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall cooperate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing land-locked States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 2 shall also be taken into account.
  4. Developed land-locked States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.
  5. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to land-locked States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

#### **Article 70. Right of geographically disadvantaged States**

1. Geographically disadvantaged States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.
2. For the purposes of this Part, “geographically disadvantaged States” means coastal States, including States bordering enclosed or semi-enclosed seas, whose geograph-

ical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own.

3. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, *inter alia*:
  - (a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;
  - (b) the extent to which the geographically disadvantaged State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;
  - (c) the extent to which other geographically disadvantaged States and land-locked States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;
  - (d) the nutritional needs of the populations of the respective States.
4. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall cooperate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing geographically disadvantaged States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 3 shall also be taken into account.
5. Developed geographically disadvantaged States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.
6. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to geographically disadvantaged States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

**Article 71. Non-applicability of articles 69 and 70**

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

**Article 72. Restrictions on transfer of rights**

1. Rights provided under articles 69 and 70 to exploit living resources shall not be directly or indirectly transferred to third States or their nationals by lease or licence, by establishing joint ventures or in any other manner which has the effect of such transfer unless otherwise agreed by the States concerned.
2. The foregoing provision does not preclude the States concerned from obtaining technical or financial assistance from third States or international organizations in order to facilitate the exercise of the rights pursuant to articles 69 and 70, provided that it does not have the effect referred to in paragraph 1.

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

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.
4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

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

1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

#### **Article 75. Charts and lists of geographical coordinates**

1. Subject to this Part, the outer limit lines of the exclusive economic zone and the lines of delimitation drawn in accordance with article 74 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.
2. The coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

## **Part VI Continental shelf**

#### **Article 76. Definition of the continental shelf**

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.
2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.
3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.
4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

- (i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
    - (ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.
  - (b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.
5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.
  6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.
  7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.
  8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II<sup>1</sup> on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.
  9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.
  10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

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<sup>1</sup>See: p. 383.



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

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

**Article 78. Legal status of the superjacent waters and air space and the rights and freedoms of other States**

1. The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.
2. The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention.

**Article 79. Submarine cables and pipelines on the continental shelf**

1. All States are entitled to lay submarine cables and pipelines on the continental shelf, in accordance with the provisions of this article.
2. Subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines.
3. The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.
4. Nothing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.

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

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

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

#### **Article 81. Drilling on the continental shelf**

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

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

1. The coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.
2. The payments and contributions shall be made annually with respect to all production at a site after the first five years of production at that site. For the sixth year, the rate of payment or contribution shall be 1 per cent of the value or volume of production at the site. The rate shall increase by 1 per cent for each subsequent year until the twelfth year and shall remain at 7 per cent thereafter. Production does not include resources used in connection with exploitation.
3. A developing State which is a net importer of a mineral resource produced from its continental shelf is exempt from making such payments or contributions in respect of that mineral resource.
4. The payments or contributions shall be made through the Authority, which shall distribute them to States Parties to this Convention, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them.

#### **Article 83. Delimitation of the continental shelf between States with opposite or adjacent coasts**

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

#### **Article 84. Charts and lists of geographical coordinates**

1. Subject to this Part, the outer limit lines of the continental shelf and the lines of delimitation drawn in accordance with article 83 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.
2. The coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations and, in the case of those showing the outer limit lines of the continental shelf, with the Secretary-General of the Authority.

#### **Article 85. Tunnelling**

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

## **Part VII High seas**

### **Section 1 General Provisions**

#### **Article 86. Application of the provisions of this Part**

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

**Article 87. Freedom of the high seas**

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:
  - (a) freedom of navigation;
  - (b) freedom of overflight;
  - (c) freedom to lay submarine cables and pipelines, subject to Part VI;
  - (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
  - (e) freedom of fishing, subject to the conditions laid down in section 2;
  - (f) freedom of scientific research, subject to Parts VI and XIII.
2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

**Article 88. Reservation of the high seas for peaceful purposes**

The high seas shall be reserved for peaceful purposes.

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

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

**Article 90. Right of navigation**

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

**Article 91. Nationality of ships**

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.
2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

**Article 92. Status of ships**

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.
2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

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

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

**Article 94. Duties of the flag State**

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.
2. In particular every State shall:
  - (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
  - (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.
3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to:
  - (a) the construction, equipment and seaworthiness of ships;
  - (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
  - (c) the use of signals, the maintenance of communications and the prevention of collisions.
4. Such measures shall include those necessary to ensure:

- (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
  - (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
  - (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.
5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.
  6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.
  7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

#### **Article 95. Immunity of warships on the high seas**

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

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

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

**Article 97. Penal jurisdiction in matters of collision or any other incident of navigation**

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.
2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.
3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

**Article 98. Duty to render assistance**

1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:
  - (a) to render assistance to any person found at sea in danger of being lost;
  - (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
  - (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.
2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.

**Article 99. Prohibition of the transport of slaves**

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

**Article 100. Duty to cooperate in the repression of piracy**

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

**Article 101. Definition of piracy**

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
  - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - (ii) ) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

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

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

**Article 103. Definition of a pirate ship or aircraft**

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

**Article 104. Retention or loss of the nationality of a pirate ship or aircraft**

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

**Article 105. Seizure of a pirate ship or aircraft**

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



**Article 106. Liability for seizure without adequate grounds**

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

**Article 107. Ships and aircraft which are entitled to seize on account of piracy**

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

**Article 108. Illicit traffic in narcotic drugs or psychotropic substances**

1. All States shall cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions.
2. Any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the cooperation of other States to suppress such traffic.

**Article 109. Unauthorized broadcasting from the high seas**

1. All States shall cooperate in the suppression of unauthorized broadcasting from the high seas.
2. For the purposes of this Convention, “unauthorized broadcasting” means the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.
3. Any person engaged in unauthorized broadcasting may be prosecuted before the court of:
  - (a) the flag State of the ship;
  - (b) the State of registry of the installation;
  - (c) the State of which the person is a national;
  - (d) any State where the transmissions can be received; or
  - (e) any State where authorized radio communication is suffering interference.
4. On the high seas, a State having jurisdiction in accordance with paragraph 3 may, in conformity with article 110, arrest any person or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.

**Article 110. Right of visit**

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:
  - (a) the ship is engaged in piracy;
  - (b) the ship is engaged in the slave trade;
  - (c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;
  - (d) the ship is without nationality; or
  - (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.
2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.
3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.
4. These provisions apply *mutatis mutandis* to military aircraft.
5. These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.

**Article 111. Right of hot pursuit**

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.
3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.
4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.
5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.
6. Where hot pursuit is effected by an aircraft:
  - (a) the provisions of paragraphs 1 to 4 shall apply *mutatis mutandis*;
  - (b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.
7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.
8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

#### **Article 112. Right to lay submarine cables and pipelines**

1. All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.

2. Article 79, paragraph 5, applies to such cables and pipelines.

### **Article 113. Breaking or injury of a submarine cable or pipeline**

Every State shall adopt the laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

### **Article 114. Breaking or injury by owners of a submarine cable or pipeline of another submarine cable or pipeline**

Every State shall adopt the laws and regulations necessary to provide that, if persons subject to its jurisdiction who are the owners of a submarine cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

### **Article 115. Indemnity for loss incurred in avoiding injury to a submarine cable or pipeline**

Every State shall adopt the laws and regulations necessary to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

## **Section 2**

### **Conservation and management of the living resources of the high seas**

#### **Article 116. Right to fish on the high seas**

All States have the right for their nationals to engage in fishing on the high seas subject to:

- (a) their treaty obligations;
- (b) the rights and duties as well as the interests of coastal States provided for, *inter alia*, in article 63, paragraph 2, and articles 64 to 67; and
- (c) the provisions of this section.

**Article 117. Duty of States to adopt with respect to their nationals measures for the conservation of the living resources of the high seas**

All States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

**Article 118. Cooperation of States in the conservation and management of living resources**

States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.

**Article 119. Conservation of the living resources of the high seas**

1. In determining the allowable catch and establishing other conservation measures for the living resources in the high seas, States shall:
  - (a) take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;
  - (b) take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.
2. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned.
3. States concerned shall ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State.

**Article 120. Marine mammals**

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

## **Part VIII Regime of islands**

**Article 121. Regime of islands**

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

## **Part IX Enclosed or semi-enclosed seas**

**Article 122. Definition**

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

**Article 123. Cooperation of States bordering enclosed or semi-enclosed seas**

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

- (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;

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- (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.

## **Part X**

### **Right of access of land-locked States to and from the sea and freedom of transit**

#### **Article 124. Use of terms**

1. For the purposes of this Convention:
  - (a) “land-locked State” means a State which has no sea-coast;
  - (b) “transit State” means a State, with or without a sea-coast, situated between a land-locked State and the sea, through whose territory traffic in transit passes;
  - (c) “traffic in transit” means transit of persons, baggage, goods and means of transport across the territory of one or more transit States, when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk or change in the mode of transport, is only a portion of a complete journey which begins or terminates within the territory of the land-locked State;
  - (d) “means of transport” means:
    - (i) railway rolling stock, sea, lake and river craft and road vehicles;
    - (ii) where local conditions so require, porters and pack animals.
2. Land-locked States and transit States may, by agreement between them, include as means of transport pipelines and gas lines and means of transport other than those included in paragraph 1.

#### **Article 125. Right of access to and from the sea and freedom of transit**

1. Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport.
2. The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, subregional or regional agreements.
3. Transit States, in the exercise of their full sovereignty over their territory, shall have the right to take all measures necessary to ensure that the rights and facilities provided for in this Part for land-locked States shall in no way infringe their legitimate interests.

**Article 126. Exclusion of application of the most-favoured-nation clause**

The provisions of this Convention, as well as special agreements relating to the exercise of the right of access to and from the sea, establishing rights and facilities on account of the special geographical position of land-locked States, are excluded from the application of the most-favoured-nation clause.

**Article 127. Customs duties, taxes and other charges**

1. Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic.
2. Means of transport in transit and other facilities provided for and used by land-locked States shall not be subject to taxes or charges higher than those levied for the use of means of transport of the transit State.

**Article 128. Free zones and other customs facilities**

For the convenience of traffic in transit, free zones or other customs facilities may be provided at the ports of entry and exit in the transit States, by agreement between those States and the land-locked States.

**Article 129. Cooperation in the construction and improvement of means of transport**

Where there are no means of transport in transit States to give effect to the freedom of transit or where the existing means, including the port installations and equipment, are inadequate in any respect, the transit States and land-locked States concerned may cooperate in constructing or improving them.

**Article 130. Measures to avoid or eliminate delays or other difficulties of a technical nature in traffic in transit**

1. Transit States shall take all appropriate measures to avoid delays or other difficulties of a technical nature in traffic in transit.
2. Should such delays or difficulties occur, the competent authorities of the transit States and land-locked States concerned shall cooperate towards their expeditious elimination.

**Article 131. Equal treatment in maritime ports**

Ships flying the flag of land-locked States shall enjoy treatment equal to that accorded to other foreign ships in maritime ports.



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**Article 132. Grant of greater transit facilities**

This Convention does not entail in any way the withdrawal of transit facilities which are greater than those provided for in this Convention and which are agreed between States Parties to this Convention or granted by a State Party. This Convention also does not preclude such grant of greater facilities in the future.

**Part XI  
The Area****Section 1  
General Provisions****Article 133. Use of terms**

For the purposes of this Part:

- (a) “resources” means all solid, liquid or gaseous mineral resources *in situ* in the Area at or beneath the seabed, including polymetallic nodules;
- (b) resources, when recovered from the Area, are referred to as “minerals”.

**Article 134. Scope of this Part**

1. This Part applies to the Area.
2. Activities in the Area shall be governed by the provisions of this Part.
3. The requirements concerning deposit of, and publicity to be given to, the charts or lists of geographical coordinates showing the limits referred to in article 1, paragraph 1(1), are set forth in Part VI.
4. Nothing in this article affects the establishment of the outer limits of the continental shelf in accordance with Part VI or the validity of agreements relating to delimitation between States with opposite or adjacent coasts.

**Article 135. Legal status of the superjacent waters and air space**

Neither this Part nor any rights granted or exercised pursuant thereto shall affect the legal status of the waters superjacent to the Area or that of the air space above those waters.

**Section 2  
Principles governing the Area****Article 136. Common heritage of mankind**

The Area and its resources are the common heritage of mankind.

**Article 137. Legal status of the Area and its resources**

1. No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights nor such appropriation shall be recognized.
2. All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in accordance with this Part and the rules, regulations and procedures of the Authority.
3. No State or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered from the Area except in accordance with this Part. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized.

**Article 138. General conduct of States in relation to the Area**

The general conduct of States in relation to the Area shall be in accordance with the provisions of this Part, the principles embodied in the Charter of the United Nations and other rules of international law in the interests of maintaining peace and security and promoting international cooperation and mutual understanding.

**Article 139. Responsibility to ensure compliance and liability for damage**

1. States Parties shall have the responsibility to ensure that activities in the Area, whether carried out by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with this Part. The same responsibility applies to international organizations for activities in the Area carried out by such organizations.
2. Without prejudice to the rules of international law and Annex III<sup>1</sup>, article 22, damage caused by the failure of a State Party or international organization to carry out its responsibilities under this Part shall entail liability; States Parties or international organizations acting together shall bear joint and several liability. A State Party shall not however be liable for damage caused by any failure to comply with this Part by a person whom it has sponsored under article 153, paragraph 2(b), if the State Party has taken all necessary and appropriate measures to secure effective compliance under article 153, paragraph 4, and Annex III<sup>2</sup>, article 4, paragraph 4.

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<sup>1</sup>See: p. 386.

<sup>2</sup>*Ibidem.*

3. States Parties that are members of international organizations shall take appropriate measures to ensure the implementation of this article with respect to such organizations.

#### **Article 140. Benefit of mankind**

1. Activities in the Area shall, as specifically provided for in this Part, be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing States and of peoples who have not attained full independence or other self-governing status recognized by the United Nations in accordance with General Assembly resolution 1514 (XV) and other relevant General Assembly resolutions.
2. The Authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis, in accordance with article 160, paragraph 2(f)(i).

#### **Article 141. Use of the Area exclusively for peaceful purposes**

The Area shall be open to use exclusively for peaceful purposes by all States, whether coastal or land-locked, without discrimination and without prejudice to the other provisions of this Part.

#### **Article 142. Rights and legitimate interests of coastal States**

1. Activities in the Area, with respect to resource deposits in the Area which lie across limits of national jurisdiction, shall be conducted with due regard to the rights and legitimate interests of any coastal State across whose jurisdiction such deposits lie.
2. Consultations, including a system of prior notification, shall be maintained with the State concerned, with a view to avoiding infringement of such rights and interests. In cases where activities in the Area may result in the exploitation of resources lying within national jurisdiction, the prior consent of the coastal State concerned shall be required.
3. Neither this Part nor any rights granted or exercised pursuant thereto shall affect the rights of coastal States to take such measures consistent with the relevant provisions of Part XII as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline, or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area.

**Article 143. Marine scientific research**

1. Marine scientific research in the Area shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole, in accordance with Part XIII.
2. The Authority may carry out marine scientific research concerning the Area and its resources, and may enter into contracts for that purpose. The Authority shall promote and encourage the conduct of marine scientific research in the Area, and shall coordinate and disseminate the results of such research and analysis when available.
3. States Parties may carry out marine scientific research in the Area. States Parties shall promote international cooperation in marine scientific research in the Area by:
  - (a) participating in international programmes and encouraging cooperation in marine scientific research by personnel of different countries and of the Authority;
  - (b) ensuring that programmes are developed through the Authority or other international organizations as appropriate for the benefit of developing States and technologically less developed States with a view to:
    - (i) strengthening their research capabilities;
    - (ii) training their personnel and the personnel of the Authority in the techniques and applications of research;
    - (iii) fostering the employment of their qualified personnel in research in the Area;
  - (c) effectively disseminating the results of research and analysis when available, through the Authority or other international channels when appropriate.

**Article 144. Transfer of technology**

1. The Authority shall take measures in accordance with this Convention:
  - (a) to acquire technology and scientific knowledge relating to activities in the Area; and
  - (b) to promote and encourage the transfer to developing States of such technology and scientific knowledge so that all States Parties benefit therefrom.
2. To this end the Authority and States Parties shall cooperate in promoting the transfer of technology and scientific knowledge relating to activities in the Area so that the Enterprise and all States Parties may benefit therefrom. In particular they shall initiate and promote:

- (a) programmes for the transfer of technology to the Enterprise and to developing States with regard to activities in the Area, including, *inter alia*, facilitating the access of the Enterprise and of developing States to the relevant technology, under fair and reasonable terms and conditions;
- (b) measures directed towards the advancement of the technology of the Enterprise and the domestic technology of developing States, particularly by providing opportunities to personnel from the Enterprise and from developing States for training in marine science and technology and for their full participation in activities in the Area.

#### **Article 145. Protection of the marine environment**

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

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

#### **Article 146. Protection of human life**

With respect to activities in the Area, necessary measures shall be taken to ensure effective protection of human life. To this end the Authority shall adopt appropriate rules, regulations and procedures to supplement existing international law as embodied in relevant treaties.

#### **Article 147. Accommodation of activities in the Area and in the marine environment**

1. Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment.
2. Installations used for carrying out activities in the Area shall be subject to the following conditions:
  - (a) such installations shall be erected, emplaced and removed solely in accordance with this Part and subject to the rules, regulations and procedures of

- the Authority. Due notice must be given of the erection, emplacement and removal of such installations, and permanent means for giving warning of their presence must be maintained;
- (b) such installations may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity;
  - (c) safety zones shall be established around such installations with appropriate markings to ensure the safety of both navigation and the installations. The configuration and location of such safety zones shall not be such as to form a belt impeding the lawful access of shipping to particular maritime zones or navigation along international sea lanes;
  - (d) such installations shall be used exclusively for peaceful purposes;
  - (e) such installations do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.
3. Other activities in the marine environment shall be conducted with reasonable regard for activities in the Area.

#### **Article 148. Participation of developing States in activities in the Area**

The effective participation of developing States in activities in the Area shall be promoted as specifically provided for in this Part, having due regard to their special interests and needs, and in particular to the special need of the land-locked and geographically disadvantaged among them to overcome obstacles arising from their disadvantaged location, including remoteness from the Area and difficulty of access to and from it.

#### **Article 149. Archaeological and historical objects**

All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.

### **Section 3 Development of resources of the Area**

#### **Article 150. Policies relating to activities in the Area**

Activities in the Area shall, as specifically provided for in this Part, be carried out in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international cooperation for the over-all development of all countries, especially developing States, and with a view to ensuring:

- (a) the development of the resources of the Area;
- (b) orderly, safe and rational management of the resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation, the avoidance of unnecessary waste;
- (c) the expansion of opportunities for participation in such activities consistent in particular with articles 144 and 148;
- (d) participation in revenues by the Authority and the transfer of technology to the Enterprise and developing States as provided for in this Convention;
- (e) increased availability of the minerals derived from the Area as needed in conjunction with minerals derived from other sources, to ensure supplies to consumers of such minerals;
- (f) the promotion of just and stable prices remunerative to producers and fair to consumers for minerals derived both from the Area and from other sources, and the promotion of long-term equilibrium between supply and demand;
- (g) the enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and the prevention of monopolization of activities in the Area;
- (h) the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, as provided in article 151;
- (i) the development of the common heritage for the benefit of mankind as a whole; and
- (j) conditions of access to markets for the imports of minerals produced from the resources of the Area and for imports of commodities produced from such minerals shall not be more favourable than the most favourable applied to imports from other sources.

#### **Article 151. Production policies**

1. (a) Without prejudice to the objectives set forth in article 150 and for the purpose of implementing subparagraph (h) of that article, the Authority, acting through existing forums or such new arrangements or agreements as may be appropriate, in which all interested parties, including both producers and consumers, participate, shall take measures necessary to promote the growth, efficiency and stability of markets for those commodities produced from the minerals derived from the Area, at prices remunerative to producers and fair to consumers. All States Parties shall cooperate to this end.

- (b) The Authority shall have the right to participate in any commodity conference dealing with those commodities and in which all interested parties including both producers and consumers participate. The Authority shall have the right to become a party to any arrangement or agreement resulting from such conferences. Participation of the Authority in any organs established under those arrangements or agreements shall be in respect of production in the Area and in accordance with the relevant rules of those organs.
  - (c) The Authority shall carry out its obligations under the arrangements or agreements referred to in this paragraph in a manner which assures a uniform and non-discriminatory implementation in respect of all production in the Area of the minerals concerned. In doing so, the Authority shall act in a manner consistent with the terms of existing contracts and approved plans of work of the Enterprise.
2. (a) During the interim period specified in paragraph 3, commercial production shall not be undertaken pursuant to an approved plan of work until the operator has applied for and has been issued a production authorization by the Authority. Such production authorizations may not be applied for or issued more than five years prior to the planned commencement of commercial production under the plan of work unless, having regard to the nature and timing of project development, the rules, regulations and procedures of the Authority prescribe another period.
- (b) In the application for the production authorization, the operator shall specify the annual quantity of nickel expected to be recovered under the approved plan of work. The application shall include a schedule of expenditures to be made by the operator after he has received the authorization which are reasonably calculated to allow him to begin commercial production on the date planned.
  - (c) For the purposes of subparagraphs (a) and (b), the Authority shall establish appropriate performance requirements in accordance with Annex III<sup>1</sup>, article 17.
  - (d) The Authority shall issue a production authorization for the level of production applied for unless the sum of that level and the levels already authorized exceeds the nickel production ceiling, as calculated pursuant to paragraph 4 in the year of issuance of the authorization, during any year of planned production falling within the interim period.
  - (e) When issued, the production authorization and approved application shall become a part of the approved plan of work.
  - (f) If the operator's application for a production authorization is denied pursuant to subparagraph (d), the operator may apply again to the Authority at any time.

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<sup>1</sup>See: p. 386.



3. The interim period shall begin five years prior to 1 January of the year in which the earliest commercial production is planned to commence under an approved plan of work. If the earliest commercial production is delayed beyond the year originally planned, the beginning of the interim period and the production ceiling originally calculated shall be adjusted accordingly. The interim period shall last 25 years or until the end of the Review Conference referred to in article 155 or until the day when such new arrangements or agreements as are referred to in paragraph 1 enter into force, whichever is earliest. The Authority shall resume the power provided in this article for the remainder of the interim period if the said arrangements or agreements should lapse or become ineffective for any reason whatsoever.
4. (a) The production ceiling for any year of the interim period shall be the sum of:
  - (i) the difference between the trend line values for nickel consumption, as calculated pursuant to subparagraph (b), for the year immediately prior to the year of the earliest commercial production and the year immediately prior to the commencement of the interim period; and
  - (ii) sixty per cent of the difference between the trend line values for nickel consumption, as calculated pursuant to subparagraph (b), for the year for which the production authorization is being applied for and the year immediately prior to the year of the earliest commercial production.
- (b) For the purposes of subparagraph (a):
  - (i) trend line values used for computing the nickel production ceiling shall be those annual nickel consumption values on a trend line computed during the year in which a production authorization is issued. The trend line shall be derived from a linear regression of the logarithms of actual nickel consumption for the most recent 15-year period for which such data are available, time being the independent variable. This trend line shall be referred to as the original trend line;
  - (ii) if the annual rate of increase of the original trend line is less than 3 per cent, then the trend line used to determine the quantities referred to in subparagraph (a) shall instead be one passing through the original trend line at the value for the first year of the relevant 15-year period, and increasing at 3 per cent annually; provided however that the production ceiling established for any year of the interim period may not in any case exceed the difference between the original trend line value for that year and the original trend line value for the year immediately prior to the commencement of the interim period.
5. The Authority shall reserve to the Enterprise for its initial production a quantity of 38,000 metric tonnes of nickel from the available production ceiling calculated pursuant to paragraph 4.

6. (a) An operator may in any year produce less than or up to 8 per cent more than the level of annual production of minerals from polymetallic nodules specified in his production authorization, provided that the over-all amount of production shall not exceed that specified in the authorization. Any excess over 8 per cent and up to 20 per cent in any year, or any excess in the first and subsequent years following two consecutive years in which excesses occur, shall be negotiated with the Authority, which may require the operator to obtain a supplementary production authorization to cover additional production.
- (b) Applications for such supplementary production authorizations shall be considered by the Authority only after all pending applications by operators who have not yet received production authorizations have been acted upon and due account has been taken of other likely applicants. The Authority shall be guided by the principle of not exceeding the total production allowed under the production ceiling in any year of the interim period. It shall not authorize the production under any plan of work of a quantity in excess of 46,500 metric tonnes of nickel per year.
7. The levels of production of other metals such as copper, cobalt and manganese extracted from the polymetallic nodules that are recovered pursuant to a production authorization should not be higher than those which would have been produced had the operator produced the maximum level of nickel from those nodules pursuant to this article. The Authority shall establish rules, regulations and procedures pursuant to Annex III<sup>1</sup>, article 17, to implement this paragraph.
8. Rights and obligations relating to unfair economic practices under relevant multilateral trade agreements shall apply to the exploration for and exploitation of minerals from the Area. In the settlement of disputes arising under this provision, States Parties which are Parties to such multilateral trade agreements shall have recourse to the dispute settlement procedures of such agreements.
9. The Authority shall have the power to limit the level of production of minerals from the Area, other than minerals from polymetallic nodules, under such conditions and applying such methods as may be appropriate by adopting regulations in accordance with article 161, paragraph 8.
10. Upon the recommendation of the Council on the basis of advice from the Economic Planning Commission, the Assembly shall establish a system of compensation or take other measures of economic adjustment assistance including cooperation with specialized agencies and other international organizations to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area. The Authority on request shall initiate studies on the prob-

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<sup>1</sup>*Ibidem.*

lems of those States which are likely to be most seriously affected with a view to minimizing their difficulties and assisting them in their economic adjustment.

### **Article 152. Exercise of powers and functions by the Authority**

1. The Authority shall avoid discrimination in the exercise of its powers and functions, including the granting of opportunities for activities in the Area.
2. Nevertheless, special consideration for developing States, including particular consideration for the land-locked and geographically disadvantaged among them, specifically provided for in this Part shall be permitted.

### **Article 153. System of exploration and exploitation**

1. Activities in the Area shall be organized, carried out and controlled by the Authority on behalf of mankind as a whole in accordance with this article as well as other relevant provisions of this Part and the relevant Annexes, and the rules, regulations and procedures of the Authority.
2. Activities in the Area shall be carried out as prescribed in paragraph 3:
  - (a) by the Enterprise, and
  - (b) in association with the Authority by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements provided in this Part and in Annex III<sup>1</sup>.
3. Activities in the Area shall be carried out in accordance with a formal written plan of work drawn up in accordance with Annex III<sup>2</sup> and approved by the Council after review by the Legal and Technical Commission. In the case of activities in the Area carried out as authorized by the Authority by the entities specified in paragraph 2(b), the plan of work shall, in accordance with Annex III, article 3, be in the form of a contract. Such contracts may provide for joint arrangements in accordance with Annex III, article 11.
4. The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part and the Annexes relating thereto, and the rules, regulations and procedures of the Authority, and the plans of work approved in accordance with paragraph 3. States Parties shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139.

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<sup>1</sup>See: p. 386.

<sup>2</sup>*Ibidem*.

5. The Authority shall have the right to take at any time any measures provided for under this Part to ensure compliance with its provisions and the exercise of the functions of control and regulation assigned to it thereunder or under any contract. The Authority shall have the right to inspect all installations in the Area used in connection with activities in the Area.
6. A contract under paragraph 3 shall provide for security of tenure. Accordingly, the contract shall not be revised, suspended or terminated except in accordance with Annex III<sup>1</sup>, articles 18 and 19.

#### **Article 154. Periodic review**

Every five years from the entry into force of this Convention, the Assembly shall undertake a general and systematic review of the manner in which the international regime of the Area established in this Convention has operated in practice. In the light of this review the Assembly may take, or recommend that other organs take, measures in accordance with the provisions and procedures of this Part and the Annexes relating thereto which will lead to the improvement of the operation of the regime.

#### **Article 155. The Review Conference**

1. Fifteen years from 1 January of the year in which the earliest commercial production commences under an approved plan of work, the Assembly shall convene a conference for the review of those provisions of this Part and the relevant Annexes which govern the system of exploration and exploitation of the resources of the Area. The Review Conference shall consider in detail, in the light of the experience acquired during that period:
  - (a) whether the provisions of this Part which govern the system of exploration and exploitation of the resources of the Area have achieved their aims in all respects, including whether they have benefited mankind as a whole;
  - (b) whether, during the 15-year period, reserved areas have been exploited in an effective and balanced manner in comparison with non-reserved areas;
  - (c) whether the development and use of the Area and its resources have been undertaken in such a manner as to foster healthy development of the world economy and balanced growth of international trade;
  - (d) whether monopolization of activities in the Area has been prevented;
  - (e) whether the policies set forth in articles 150 and 151 have been fulfilled; and
  - (f) whether the system has resulted in the equitable sharing of benefits derived from activities in the Area, taking into particular consideration the interests and needs of the developing States.

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<sup>1</sup>*Ibidem.*

2. The Review Conference shall ensure the maintenance of the principle of the common heritage of mankind, the international regime designed to ensure equitable exploitation of the resources of the Area for the benefit of all countries, especially the developing States, and an Authority to organize, conduct and control activities in the Area. It shall also ensure the maintenance of the principles laid down in this Part with regard to the exclusion of claims or exercise of sovereignty over any part of the Area, the rights of States and their general conduct in relation to the Area, and their participation in activities in the Area in conformity with this Convention, the prevention of monopolization of activities in the Area, the use of the Area exclusively for peaceful purposes, economic aspects of activities in the Area, marine scientific research, transfer of technology, protection of the marine environment, protection of human life, rights of coastal States, the legal status of the waters superjacent to the Area and that of the air space above those waters and accommodation between activities in the Area and other activities in the marine environment.
3. The decision-making procedure applicable at the Review Conference shall be the same as that applicable at the Third United Nations Conference on the Law of the Sea. The Conference shall make every effort to reach agreement on any amendments by way of consensus and there should be no voting on such matters until all efforts at achieving consensus have been exhausted.
4. If, five years after its commencement, the Review Conference has not reached agreement on the system of exploration and exploitation of the resources of the Area, it may decide during the ensuing 12 months, by a three-fourths majority of the States Parties, to adopt and submit to the States Parties for ratification or accession such amendments changing or modifying the system as it determines necessary and appropriate. Such amendments shall enter into force for all States Parties 12 months after the deposit of instruments of ratification or accession by three fourths of the States Parties.
5. Amendments adopted by the Review Conference pursuant to this article shall not affect rights acquired under existing contracts.

## **Section 4 The Authority**

### **Subsection A General provisions**

#### **Article 156. Establishment of the Authority**

1. There is hereby established the International Seabed Authority, which shall function in accordance with this Part.
2. All States Parties are *ipso facto* members of the Authority.

3. Observers at the Third United Nations Conference on the Law of the Sea who have signed the Final Act and who are not referred to in article 305, paragraph 1(c), (d), (e) or (f), shall have the right to participate in the Authority as observers, in accordance with its rules, regulations and procedures.
4. The seat of the Authority shall be in Jamaica.
5. The Authority may establish such regional centres or offices as it deems necessary for the exercise of its functions.

#### **Article 157. Nature and fundamental principles of the Authority**

1. The Authority is the organization through which States Parties shall, in accordance with this Part, organize and control activities in the Area, particularly with a view to administering the resources of the Area.
2. The powers and functions of the Authority shall be those expressly conferred upon it by this Convention. The Authority shall have such incidental powers, consistent with this Convention, as are implicit in and necessary for the exercise of those powers and functions with respect to activities in the Area.
3. The Authority is based on the principle of the sovereign equality of all its members.
4. All members of the Authority shall fulfil in good faith the obligations assumed by them in accordance with this Part in order to ensure to all of them the rights and benefits resulting from membership.

#### **Article 158. Organs of the Authority**

1. There are hereby established, as the principal organs of the Authority, an Assembly, a Council and a Secretariat.
2. There is hereby established the Enterprise, the organ through which the Authority shall carry out the functions referred to in article 170, paragraph 1.
3. Such subsidiary organs as may be found necessary may be established in accordance with this Part.
4. Each principal organ of the Authority and the Enterprise shall be responsible for exercising those powers and functions which are conferred upon it. In exercising such powers and functions each organ shall avoid taking any action which may derogate from or impede the exercise of specific powers and functions conferred upon another organ.

## **Subsection B The Assembly**

### **Article 159. Composition, procedure and voting**

1. The Assembly shall consist of all the members of the Authority. Each member shall have one representative in the Assembly, who may be accompanied by alternates and advisers.
2. The Assembly shall meet in regular annual sessions and in such special sessions as may be decided by the Assembly, or convened by the Secretary-General at the request of the Council or of a majority of the members of the Authority.
3. Sessions shall take place at the seat of the Authority unless otherwise decided by the Assembly.
4. The Assembly shall adopt its rules of procedure. At the beginning of each regular session, it shall elect its President and such other officers as may be required. They shall hold office until a new President and other officers are elected at the next regular session.
5. A majority of the members of the Assembly shall constitute a quorum.
6. Each member of the Assembly shall have one vote.
7. Decisions on questions of procedure, including decisions to convene special sessions of the Assembly, shall be taken by a majority of the members present and voting.
8. Decisions on questions of substance shall be taken by a two-thirds majority of the members present and voting, provided that such majority includes a majority of the members participating in the session. When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance unless otherwise decided by the Assembly by the majority required for decisions on questions of substance.
9. When a question of substance comes up for voting for the first time, the President may, and shall, if requested by at least one fifth of the members of the Assembly, defer the issue of taking a vote on that question for a period not exceeding five calendar days. This rule may be applied only once to any question, and shall not be applied so as to defer the question beyond the end of the session.
10. Upon a written request addressed to the President and sponsored by at least one fourth of the members of the Authority for an advisory opinion on the conformity with this Convention of a proposal before the Assembly on any matter, the Assembly shall request the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea to give an advisory opinion thereon and shall defer voting on that proposal pending receipt of the advisory opinion by the Chamber. If the

advisory opinion is not received before the final week of the session in which it is requested, the Assembly shall decide when it will meet to vote upon the deferred proposal.

#### **Article 160. Powers and functions**

1. The Assembly, as the sole organ of the Authority consisting of all the members, shall be considered the supreme organ of the Authority to which the other principal organs shall be accountable as specifically provided for in this Convention. The Assembly shall have the power to establish general policies in conformity with the relevant provisions of this Convention on any question or matter within the competence of the Authority.
2. In addition, the powers and functions of the Assembly shall be:
  - (a) to elect the members of the Council in accordance with article 161;
  - (b) to elect the Secretary-General from among the candidates proposed by the Council;
  - (c) to elect, upon the recommendation of the Council, the members of the Governing Board of the Enterprise and the Director-General of the Enterprise;
  - (d) to establish such subsidiary organs as it finds necessary for the exercise of its functions in accordance with this Part. In the composition of these subsidiary organs due account shall be taken of the principle of equitable geographical distribution and of special interests and the need for members qualified and competent in the relevant technical questions dealt with by such organs;
  - (e) to assess the contributions of members to the administrative budget of the Authority in accordance with an agreed scale of assessment based upon the scale used for the regular budget of the United Nations until the Authority shall have sufficient income from other sources to meet its administrative expenses;
  - (f)
    - (i) to consider and approve, upon the recommendation of the Council, the rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the payments and contributions made pursuant to article 82, taking into particular consideration the interests and needs of developing States and peoples who have not attained full independence or other self-governing status. If the Assembly does not approve the recommendations of the Council, the Assembly shall return them to the Council for reconsideration in the light of the views expressed by the Assembly;
    - (ii) to consider and approve the rules, regulations and procedures of the Authority, and any amendments thereto, provisionally adopted by the Council pursuant to article 162, paragraph 2 (o)(ii). These rules, regulations and procedures shall relate to prospecting, exploration and exploita-



- tion in the Area, the financial management and internal administration of the Authority, and, upon the recommendation of the Governing Board of the Enterprise, to the transfer of funds from the Enterprise to the Authority;
- (g) to decide upon the equitable sharing of financial and other economic benefits derived from activities in the Area, consistent with this Convention and the rules, regulations and procedures of the Authority;
  - (h) to consider and approve the proposed annual budget of the Authority submitted by the Council;
  - (i) to examine periodic reports from the Council and from the Enterprise and special reports requested from the Council or any other organ of the Authority;
  - (j) to initiate studies and make recommendations for the purpose of promoting international cooperation concerning activities in the Area and encouraging the progressive development of international law relating thereto and its codification;
  - (k) to consider problems of a general nature in connection with activities in the Area arising in particular for developing States, as well as those problems for States in connection with activities in the Area that are due to their geographical location, particularly for land-locked and geographically disadvantaged States;
  - (l) to establish, upon the recommendation of the Council, on the basis of advice from the Economic Planning Commission, a system of compensation or other measures of economic adjustment assistance as provided in article 151, paragraph 10;
  - (m) to suspend the exercise of rights and privileges of membership pursuant to article 185;
  - (n) to discuss any question or matter within the competence of the Authority and to decide as to which organ of the Authority shall deal with any such question or matter not specifically entrusted to a particular organ, consistent with the distribution of powers and functions among the organs of the Authority.

### **Subsection C The Council**

#### **Article 161. Composition, procedure and voting**

1. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:
  - (a) four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent of total world consumption or have had net imports of more than 2 per cent

- of total world imports of the commodities produced from the categories of minerals to be derived from the Area, and in any case one State from the Eastern European (Socialist) region, as well as the largest consumer;
- (b) four members from among the eight States Parties which have the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals, including at least one State from the Eastern European (Socialist) region;
  - (c) four members from among States Parties which on the basis of production in areas under their jurisdiction are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;
  - (d) six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals, and least developed States;
  - (e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern European (Socialist), Latin America and Western European and Others.
2. In electing the members of the Council in accordance with paragraph 1, the Assembly shall ensure that:
    - (a) land-locked and geographically disadvantaged States are represented to a degree which is reasonably proportionate to their representation in the Assembly;
    - (b) coastal States, especially developing States, which do not qualify under paragraph 1(a), (b), (c) or (d) are represented to a degree which is reasonably proportionate to their representation in the Assembly;
    - (c) each group of States Parties to be represented on the Council is represented by those members, if any, which are nominated by that group.
  3. Elections shall take place at regular sessions of the Assembly. Each member of the Council shall be elected for four years. At the first election, however, the term of one half of the members of each group referred to in paragraph 1 shall be two years.
  4. Members of the Council shall be eligible for re-election, but due regard should be paid to the desirability of rotation of membership.

5. The Council shall function at the seat of the Authority, and shall meet as often as the business of the Authority may require, but not less than three times a year.
6. A majority of the members of the Council shall constitute a quorum.
7. Each member of the Council shall have one vote.
8. (a) Decisions on questions of procedure shall be taken by a majority of the members present and voting.
  - (b) Decisions on questions of substance arising under the following provisions shall be taken by a two-thirds majority of the members present and voting, provided that such majority includes a majority of the members of the Council: article 162, paragraph 2, subparagraphs (f); (g); (h); (i); (n); (p); (v); article 191.
  - (c) Decisions on questions of substance arising under the following provisions shall be taken by a three-fourths majority of the members present and voting, provided that such majority includes a majority of the members of the Council: article 162, paragraph 1; article 162, paragraph 2, subparagraphs (a); (b); (c); (d); (e); (l); (q); (r); (s); (t); (u) in cases of non-compliance by a contractor or a sponsor; (w) provided that orders issued thereunder may be binding for not more than 30 days unless confirmed by a decision taken in accordance with subparagraph (d); article 162, paragraph 2, subparagraphs (x); (y); (z); article 163, paragraph 2; article 174, paragraph 3; Annex IV<sup>1</sup>, article 11.
  - (d) Decisions on questions of substance arising under the following provisions shall be taken by consensus: article 162, paragraph 2(m) and (o); adoption of amendments to Part XI.
  - (e) For the purposes of subparagraphs (d), (f) and (g), “consensus” means the absence of any formal objection. Within 14 days of the submission of a proposal to the Council, the President of the Council shall determine whether there would be a formal objection to the adoption of the proposal. If the President determines that there would be such an objection, the President shall establish and convene, within three days following such determination, a conciliation committee consisting of not more than nine members of the Council, with the President as chairman, for the purpose of reconciling the differences and producing a proposal which can be adopted by consensus. The committee shall work expeditiously and report to the Council within 14 days following its establishment. If the committee is unable to recommend a proposal which can be adopted by consensus, it shall set out in its report the grounds on which the proposal is being opposed.
  - (f) Decisions on questions not listed above which the Council is authorized to take by the rules, regulations and procedures of the Authority or otherwise shall be taken pursuant to the subparagraphs of this paragraph specified in the rules,

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<sup>1</sup>See: p. 408.

- regulations and procedures or, if not specified therein, then pursuant to the subparagraph determined by the Council if possible in advance, by consensus.
- (g) When the issue arises as to whether a question is within subparagraph (a), (b), (c) or (d), the question shall be treated as being within the subparagraph requiring the higher or highest majority or consensus as the case may be, unless otherwise decided by the Council by the said majority or by consensus.
9. The Council shall establish a procedure whereby a member of the Authority not represented on the Council may send a representative to attend a meeting of the Council when a request is made by such member, or a matter particularly affecting it is under consideration. Such a representative shall be entitled to participate in the deliberations but not to vote.

#### **Article 162. Powers and functions**

1. The Council is the executive organ of the Authority. The Council shall have the power to establish, in conformity with this Convention and the general policies established by the Assembly, the specific policies to be pursued by the Authority on any question or matter within the competence of the Authority.
2. In addition, the Council shall:
  - (a) supervise and coordinate the implementation of the provisions of this Part on all questions and matters within the competence of the Authority and invite the attention of the Assembly to cases of non-compliance;
  - (b) propose to the Assembly a list of candidates for the election of the Secretary-General;
  - (c) recommend to the Assembly candidates for the election of the members of the Governing Board of the Enterprise and the Director-General of the Enterprise;
  - (d) establish, as appropriate, and with due regard to economy and efficiency, such subsidiary organs as it finds necessary for the exercise of its functions in accordance with this Part. In the composition of subsidiary organs, emphasis shall be placed on the need for members qualified and competent in relevant technical matters dealt with by those organs provided that due account shall be taken of the principle of equitable geographical distribution and of special interests;
  - (e) adopt its rules of procedure including the method of selecting its president;
  - (f) enter into agreements with the United Nations or other international organizations on behalf of the Authority and within its competence, subject to approval by the Assembly;
  - (g) consider the reports of the Enterprise and transmit them to the Assembly with its recommendations;
  - (h) present to the Assembly annual reports and such special reports as the Assembly may request;

- (i) issue directives to the Enterprise in accordance with article 170;
- (j) approve plans of work in accordance with Annex III<sup>1</sup>, article 6. The Council shall act upon each plan of work within 60 days of its submission by the Legal and Technical Commission at a session of the Council in accordance with the following procedures:
  - (i) if the Commission recommends the approval of a plan of work, it shall be deemed to have been approved by the Council if no member of the Council submits in writing to the President within 14 days a specific objection alleging non-compliance with the requirements of Annex III, article 6. If there is an objection, the conciliation procedure set forth in article 161, paragraph 8(e), shall apply. If, at the end of the conciliation procedure, the objection is still maintained, the plan of work shall be deemed to have been approved by the Council unless the Council disapproves it by consensus among its members excluding any State or States making the application or sponsoring the applicant;
  - (ii) if the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may approve the plan of work by a three-fourths majority of the members present and voting, provided that such majority includes a majority of the members participating in the session;
- (k) approve plans of work submitted by the Enterprise in accordance with Annex IV<sup>2</sup>, article 12, applying, *mutatis mutandis*, the procedures set forth in subparagraph (j);
- (l) exercise control over activities in the Area in accordance with article 153, paragraph 4, and the rules, regulations and procedures of the Authority;
- (m) take, upon the recommendation of the Economic Planning Commission, necessary and appropriate measures in accordance with article 150, subparagraph (h), to provide protection from the adverse economic effects specified therein;
- (n) make recommendations to the Assembly, on the basis of advice from the Economic Planning Commission, for a system of compensation or other measures of economic adjustment assistance as provided in article 151, paragraph 10;
- (o)
  - (i) recommend to the Assembly rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the payments and contributions made pursuant to article 82, taking into particular consideration the interests and needs of the developing States and peoples who have not attained full independence or other self-governing status;
  - (ii) adopt and apply provisionally, pending approval by the Assembly, the rules, regulations and procedures of the Authority, and any amendments thereto,

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<sup>1</sup>See: p. 386.

<sup>2</sup>See: p. 408

taking into account the recommendations of the Legal and Technical Commission or other subordinate organ concerned. These rules, regulations and procedures shall relate to prospecting, exploration and exploitation in the Area and the financial management and internal administration of the Authority. Priority shall be given to the adoption of rules, regulations and procedures for the exploration for and exploitation of polymetallic nodules. Rules, regulations and procedures for the exploration for and exploitation of any resource other than polymetallic nodules shall be adopted within three years from the date of a request to the Authority by any of its members to adopt such rules, regulations and procedures in respect of such resource. All rules, regulations and procedures shall remain in effect on a provisional basis until approved by the Assembly or until amended by the Council in the light of any views expressed by the Assembly;

- (p) review the collection of all payments to be made by or to the Authority in connection with operations pursuant to this Part;
- (q) make the selection from among applicants for production authorizations pursuant to Annex III<sup>1</sup>, article 7, where such selection is required by that provision;
- (r) submit the proposed annual budget of the Authority to the Assembly for its approval;
- (s) make recommendations to the Assembly concerning policies on any question or matter within the competence of the Authority;
- (t) make recommendations to the Assembly concerning suspension of the exercise of the rights and privileges of membership pursuant to article 185;
- (u) institute proceedings on behalf of the Authority before the Seabed Disputes Chamber in cases of non-compliance;
- (v) notify the Assembly upon a decision by the Seabed Disputes Chamber in proceedings instituted under subparagraph (u), and make any recommendations which it may find appropriate with respect to measures to be taken;
- (w) issue emergency orders, which may include orders for the suspension or adjustment of operations, to prevent serious harm to the marine environment arising out of activities in the Area;
- (x) disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment;
- (y) establish a subsidiary organ for the elaboration of draft financial rules, regulations and procedures relating to:
  - (i) financial management in accordance with articles 171 to 175; and

<sup>1</sup>See: p. 386.

- (ii) financial arrangements in accordance with Annex III<sup>1</sup>, article 13 and article 17, paragraph 1(c);
- (z) establish appropriate mechanisms for directing and supervising a staff of inspectors who shall inspect activities in the Area to determine whether this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with.

### **Article 163. Organs of the Council**

1. There are hereby established the following organs of the Council:
  - (a) an Economic Planning Commission;
  - (b) a Legal and Technical Commission.
2. Each Commission shall be composed of 15 members, elected by the Council from among the candidates nominated by the States Parties. However, if necessary, the Council may decide to increase the size of either Commission having due regard to economy and efficiency.
3. Members of a Commission shall have appropriate qualifications in the area of competence of that Commission. States Parties shall nominate candidates of the highest standards of competence and integrity with qualifications in relevant fields so as to ensure the effective exercise of the functions of the Commissions.
4. In the election of members of the Commissions, due account shall be taken of the need for equitable geographical distribution and the representation of special interests.
5. No State Party may nominate more than one candidate for the same Commission. No person shall be elected to serve on more than one Commission.
6. Members of the Commissions shall hold office for a term of five years. They shall be eligible for re-election for a further term.
7. In the event of the death, incapacity or resignation of a member of a Commission prior to the expiration of the term of office, the Council shall elect for the remainder of the term, a member from the same geographical region or area of interest.
8. Members of Commissions shall have no financial interest in any activity relating to exploration and exploitation in the Area. Subject to their responsibilities to the Commissions upon which they serve, they shall not disclose, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with Annex III<sup>2</sup>, article 14, or any other confidential information coming to their knowledge by reason of their duties for the Authority.

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<sup>1</sup>See: p. 386.

<sup>2</sup>See: p. 386.

9. Each Commission shall exercise its functions in accordance with such guidelines and directives as the Council may adopt.
10. Each Commission shall formulate and submit to the Council for approval such rules and regulations as may be necessary for the efficient conduct of the Commission's functions.
11. The decision-making procedures of the Commissions shall be established by the rules, regulations and procedures of the Authority. Recommendations to the Council shall, where necessary, be accompanied by a summary on the divergencies of opinion in the Commission.
12. Each Commission shall normally function at the seat of the Authority and shall meet as often as is required for the efficient exercise of its functions.
13. In the exercise of its functions, each Commission may, where appropriate, consult another commission, any competent organ of the United Nations or of its specialized agencies or any international organizations with competence in the subject-matter of such consultation.

#### **Article 164. The Economic Planning Commission**

1. Members of the Economic Planning Commission shall have appropriate qualifications such as those relevant to mining, management of mineral resource activities, international trade or international economics. The Council shall endeavour to ensure that the membership of the Commission reflects all appropriate qualifications. The Commission shall include at least two members from developing States whose exports of the categories of minerals to be derived from the Area have a substantial bearing upon their economies.
2. The Commission shall:
  - (a) propose, upon the request of the Council, measures to implement decisions relating to activities in the Area taken in accordance with this Convention;
  - (b) review the trends of and the factors affecting supply, demand and prices of minerals which may be derived from the Area, bearing in mind the interests of both importing and exporting countries, and in particular of the developing States among them;
  - (c) examine any situation likely to lead to the adverse effects referred to in article 150, subparagraph (h), brought to its attention by the State Party or States Parties concerned, and make appropriate recommendations to the Council;
  - (d) propose to the Council for submission to the Assembly, as provided in article 151, paragraph 10, a system of compensation or other measures of economic adjustment assistance for developing States which suffer adverse effects caused by activities in the Area. The Commission shall make the recommend-



ations to the Council that are necessary for the application of the system or other measures adopted by the Assembly in specific cases.

### **Article 165. The Legal and Technical Commission**

1. Members of the Legal and Technical Commission shall have appropriate qualifications such as those relevant to exploration for and exploitation and processing of mineral resources, oceanology, protection of the marine environment, or economic or legal matters relating to ocean mining and related fields of expertise. The Council shall endeavour to ensure that the membership of the Commission reflects all appropriate qualifications.
2. The Commission shall:
  - (a) make recommendations with regard to the exercise of the Authority's functions upon the request of the Council;
  - (b) review formal written plans of work for activities in the Area in accordance with article 153, paragraph 3, and submit appropriate recommendations to the Council. The Commission shall base its recommendations solely on the grounds stated in Annex III<sup>1</sup> and shall report fully thereon to the Council;
  - (c) supervise, upon the request of the Council, activities in the Area, where appropriate, in consultation and collaboration with any entity carrying out such activities or State or States concerned and report to the Council;
  - (d) prepare assessments of the environmental implications of activities in the Area;
  - (e) make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field;
  - (f) formulate and submit to the Council the rules, regulations and procedures referred to in article 162, paragraph 2(o), taking into account all relevant factors including assessments of the environmental implications of activities in the Area;
  - (g) keep such rules, regulations and procedures under review and recommend to the Council from time to time such amendments thereto as it may deem necessary or desirable;
  - (h) make recommendations to the Council regarding the establishment of a monitoring programme to observe, measure, evaluate and analyse, by recognized scientific methods, on a regular basis, the risks or effects of pollution of the marine environment resulting from activities in the Area, ensure that existing regulations are adequate and are complied with and coordinate the implementation of the monitoring programme approved by the Council;

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<sup>1</sup>See: p. 386.

- (i) recommend to the Council that proceedings be instituted on behalf of the Authority before the Seabed Disputes Chamber, in accordance with this Part and the relevant Annexes taking into account particularly article 187;
  - (j) make recommendations to the Council with respect to measures to be taken, upon a decision by the Seabed Disputes Chamber in proceedings instituted in accordance with subparagraph (i);
  - (k) make recommendations to the Council to issue emergency orders, which may include orders for the suspension or adjustment of operations, to prevent serious harm to the marine environment arising out of activities in the Area. Such recommendations shall be taken up by the Council on a priority basis;
  - (l) make recommendations to the Council to disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment;
  - (m) make recommendations to the Council regarding the direction and supervision of a staff of inspectors who shall inspect activities in the Area to determine whether the provisions of this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with;
  - (n) calculate the production ceiling and issue production authorizations on behalf of the Authority pursuant to article 151, paragraphs 2 to 7, following any necessary selection among applicants for production authorizations by the Council in accordance with Annex III<sup>12</sup>, article 7.
3. The members of the Commission shall, upon request by any State Party or other party concerned, be accompanied by a representative of such State or other party concerned when carrying out their function of supervision and inspection.

## **Subsection D The Secretariat**

### **Article 166. The Secretariat**

1. The Secretariat of the Authority shall comprise a Secretary-General and such staff as the Authority may require.
2. The Secretary-General shall be elected for four years by the Assembly from among the candidates proposed by the Council and may be re-elected.
3. The Secretary-General shall be the chief administrative officer of the Authority, and shall act in that capacity in all meetings of the Assembly, of the Council and of any subsidiary organ, and shall perform such other administrative functions as are entrusted to the Secretary-General by these organs.

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<sup>1</sup>See: p. 386.

<sup>2</sup>See: p. 386.

4. The Secretary-General shall make an annual report to the Assembly on the work of the Authority.

#### **Article 167. The staff of the Authority**

1. The staff of the Authority shall consist of such qualified scientific and technical and other personnel as may be required to fulfil the administrative functions of the Authority.
2. The paramount consideration in the recruitment and employment of the staff and in the determination of their conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Subject to this consideration, due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.
3. The staff shall be appointed by the Secretary-General. The terms and conditions on which they shall be appointed, remunerated and dismissed shall be in accordance with the rules, regulations and procedures of the Authority.

#### **Article 168. International character of the Secretariat**

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other source external to the Authority. They shall refrain from any action which might reflect on their position as international officials responsible only to the Authority. Each State Party undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities. Any violation of responsibilities by a staff member shall be submitted to the appropriate administrative tribunal as provided in the rules, regulations and procedures of the Authority.
2. The Secretary-General and the staff shall have no financial interest in any activity relating to exploration and exploitation in the Area. Subject to their responsibilities to the Authority, they shall not disclose, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with Annex III<sup>1</sup>, article 14, or any other confidential information coming to their knowledge by reason of their employment with the Authority.
3. Violations of the obligations of a staff member of the Authority set forth in paragraph 2 shall, on the request of a State Party affected by such violation, or a natural or juridical person, sponsored by a State Party as provided in article 153, paragraph 2(b), and affected by such violation, be submitted by the Authority against the staff member concerned to a tribunal designated by the rules, regulations and procedures of the Authority. The Party affected shall have the right to take part

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<sup>1</sup>See: p. 386.

in the proceedings. If the tribunal so recommends, the Secretary-General shall dismiss the staff member concerned.

4. The rules, regulations and procedures of the Authority shall contain such provisions as are necessary to implement this article.

#### **Article 169. Consultation and cooperation with international and non-governmental organizations**

1. The Secretary-General shall, on matters within the competence of the Authority, make suitable arrangements, with the approval of the Council, for consultation and cooperation with international and non-governmental organizations recognized by the Economic and Social Council of the United Nations.
2. Any organization with which the Secretary-General has entered into an arrangement under paragraph 1 may designate representatives to attend meetings of the organs of the Authority as observers in accordance with the rules of procedure of these organs. Procedures shall be established for obtaining the views of such organizations in appropriate cases.
3. The Secretary-General may distribute to States Parties written reports submitted by the non-governmental organizations referred to in paragraph 1 on subjects in which they have special competence and which are related to the work of the Authority.

### **Subsection E The Enterprise**

#### **Article 170. The Enterprise**

1. The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2(a), as well as the transporting, processing and marketing of minerals recovered from the Area.
2. The Enterprise shall, within the framework of the international legal personality of the Authority, have such legal capacity as is provided for in the Statute set forth in Annex IV<sup>1</sup>. The Enterprise shall act in accordance with this Convention and the rules, regulations and procedures of the Authority, as well as the general policies established by the Assembly, and shall be subject to the directives and control of the Council.
3. The Enterprise shall have its principal place of business at the seat of the Authority.
4. The Enterprise shall, in accordance with article 173, paragraph 2, and Annex IV<sup>2</sup>, article 11, be provided with such funds as it may require to carry out its functions,

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<sup>1</sup>See: p. 408.

<sup>2</sup>*Ibidem.*

and shall receive technology as provided in article 144 and other relevant provisions of this Convention.

## **Subsection F**

### **Financial arrangements of the Authority**

#### **Article 171. Funds of the Authority**

The funds of the Authority shall include:

- (a) assessed contributions made by members of the Authority in accordance with article 160, paragraph 2(e);
- (b) funds received by the Authority pursuant to Annex III<sup>1</sup>, article 13, in connection with activities in the Area;
- (c) funds transferred from the Enterprise in accordance with Annex IV<sup>2</sup>, article 10;
- (d) funds borrowed pursuant to article 174;
- (e) voluntary contributions made by members or other entities; and
- (f) payments to a compensation fund, in accordance with article 151, paragraph 10, whose sources are to be recommended by the Economic Planning Commission.

#### **Article 172. Annual budget of the Authority**

The Secretary-General shall draft the proposed annual budget of the Authority and submit it to the Council. The Council shall consider the proposed annual budget and submit it to the Assembly, together with any recommendations thereon. The Assembly shall consider and approve the proposed annual budget in accordance with article 160, paragraph 2(h).

#### **Article 173. Expenses of the Authority**

1. The contributions referred to in article 171, subparagraph (a), shall be paid into a special account to meet the administrative expenses of the Authority until the Authority has sufficient funds from other sources to meet those expenses.
2. The administrative expenses of the Authority shall be a first call upon the funds of the Authority. Except for the assessed contributions referred to in article 171, subparagraph (a), the funds which remain after payment of administrative expenses may, *inter alia*:

- (a) be shared in accordance with article 140 and article 160, paragraph 2(g);

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<sup>1</sup>See: p. 386.

<sup>2</sup>See: p. 408.

- (b) be used to provide the Enterprise with funds in accordance with article 170, paragraph 4;
- (c) be used to compensate developing States in accordance with article 151, paragraph 10, and article 160, paragraph 2(l).

#### **Article 174. Borrowing power of the Authority**

1. The Authority shall have the power to borrow funds.
2. The Assembly shall prescribe the limits on the borrowing power of the Authority in the financial regulations adopted pursuant to article 160, paragraph 2(f).
3. The Council shall exercise the borrowing power of the Authority.
4. States Parties shall not be liable for the debts of the Authority.

#### **Article 175. Annual audit**

The records, books and accounts of the Authority, including its annual financial statements, shall be audited annually by an independent auditor appointed by the Assembly.

### **Subsection G Legal status, privileges and immunities**

#### **Article 176. Legal status**

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

#### **Article 177. Privileges and immunities**

To enable the Authority to exercise its functions, it shall enjoy in the territory of each State Party the privileges and immunities set forth in this subsection. The privileges and immunities relating to the Enterprise shall be those set forth in Annex IV<sup>1</sup>, article 13.

#### **Article 178. Immunity from legal process**

The Authority, its property and assets, shall enjoy immunity from legal process except to the extent that the Authority expressly waives this immunity in a particular case.

#### **Article 179. Immunity from search and any form of seizure**

The property and assets of the Authority, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

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<sup>1</sup>See: p. 408.

**Article 180. Exemption from restrictions, regulations, controls and moratoria**

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

**Article 181. Archives and official communications of the Authority**

1. The archives of the Authority, wherever located, shall be inviolable.
2. Proprietary data, industrial secrets or similar information and personnel records shall not be placed in archives which are open to public inspection.
3. With regard to its official communications, the Authority shall be accorded by each State Party treatment no less favourable than that accorded by that State to other international organizations.

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

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

- (a) immunity from legal process with respect to acts performed by them in the exercise of their functions, except to the extent that the State which they represent or the Authority, as appropriate, expressly waives this immunity in a particular case;
- (b) if they are not nationals of that State Party, the same exemptions from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by that State to the representatives, officials and employees of comparable rank of other States Parties.

**Article 183. Exemption from taxes and customs duties**

1. Within the scope of its official activities, the Authority, its assets and property, its income, and its operations and transactions, authorized by this Convention, shall be exempt from all direct taxation and goods imported or exported for its official use shall be exempt from all customs duties. The Authority shall not claim exemption from taxes which are no more than charges for services rendered.
2. When purchases of goods or services of substantial value necessary for the official activities of the Authority are made by or on behalf of the Authority, and when the price of such goods or services includes taxes or duties, appropriate measures shall, to the extent practicable, be taken by States Parties to grant exemption from such taxes or duties or provide for their reimbursement. Goods imported or purchased under an exemption provided for in this article shall not be sold or otherwise

disposed of in the territory of the State Party which granted the exemption, except under conditions agreed with that State Party.

3. No tax shall be levied by States Parties on or in respect of salaries and emoluments paid or any other form of payment made by the Authority to the Secretary-General and staff of the Authority, as well as experts performing missions for the Authority, who are not their nationals.

### **Subsection H**

#### **Suspension of the exercise of rights and privileges of members**

##### **Article 184. Suspension of the exercise of voting rights**

A State Party which is in arrears in the payment of its financial contributions to the Authority shall have no vote if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.

##### **Article 185. Suspension of exercise of rights and privileges of membership**

1. A State Party which has grossly and persistently violated the provisions of this Part may be suspended from the exercise of the rights and privileges of membership by the Assembly upon the recommendation of the Council.
2. No action may be taken under paragraph 1 until the Seabed Disputes Chamber has found that a State Party has grossly and persistently violated the provisions of this Part.

### **Section 5**

#### **Settlement of disputes and advisory opinions**

##### **Article 186. Seabed Disputes Chamber of the International Tribunal for the Law of the Sea**

The establishment of the Seabed Disputes Chamber and the manner in which it shall exercise its jurisdiction shall be governed by the provisions of this section, of Part XV and of Annex VI<sup>1</sup>.

##### **Article 187. Jurisdiction of the Seabed Disputes Chamber**

The Seabed Disputes Chamber shall have jurisdiction under this Part and the Annexes relating thereto in disputes with respect to activities in the Area falling within the following categories:

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<sup>1</sup>See: p. 420.



- (a) disputes between States Parties concerning the interpretation or application of this Part and the Annexes relating thereto;
- (b) disputes between a State Party and the Authority concerning:
  - (i) acts or omissions of the Authority or of a State Party alleged to be in violation of this Part or the Annexes relating thereto or of rules, regulations and procedures of the Authority adopted in accordance therewith; or
  - (ii) acts of the Authority alleged to be in excess of jurisdiction or a misuse of power;
- (c) disputes between parties to a contract, being States Parties, the Authority or the Enterprise, state enterprises and natural or juridical persons referred to in article 153, paragraph 2(b), concerning:
  - (i) the interpretation or application of a relevant contract or a plan of work; or
  - (ii) acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interests;
- (d) disputes between the Authority and a prospective contractor who has been sponsored by a State as provided in article 153, paragraph 2(b), and has duly fulfilled the conditions referred to in Annex III<sup>1</sup>, article 4, paragraph 6, and article 13, paragraph 2, concerning the refusal of a contract or a legal issue arising in the negotiation of the contract;
- (e) disputes between the Authority and a State Party, a state enterprise or a natural or juridical person sponsored by a State Party as provided for in article 153, paragraph 2(b), where it is alleged that the Authority has incurred liability as provided in Annex III<sup>2</sup>, article 22;
- (f) any other disputes for which the jurisdiction of the Chamber is specifically provided in this Convention.

**Article 188. Submission of disputes to a special chamber of the International Tribunal for the Law of the Sea or an ad hoc chamber of the Seabed Disputes Chamber or to binding commercial arbitration**

1. Disputes between States Parties referred to in article 187, subparagraph (a), may be submitted:
  - (a) at the request of the parties to the dispute, to a special chamber of the International Tribunal for the Law of the Sea to be formed in accordance with Annex VI<sup>3</sup>, articles 15 and 17; or

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<sup>1</sup>See: p. 386.

<sup>2</sup>See: p. 386.

<sup>3</sup>See: p. 408.

(b) at the request of any party to the dispute, to an ad hoc chamber of the Seabed Disputes Chamber to be formed in accordance with Annex VI, article 36.

2. (a) Disputes concerning the interpretation or application of a contract referred to in article 187, subparagraph (c)(i), shall be submitted, at the request of any party to the dispute, to binding commercial arbitration, unless the parties otherwise agree. A commercial arbitral tribunal to which the dispute is submitted shall have no jurisdiction to decide any question of interpretation of this Convention. When the dispute also involves a question of the interpretation of Part XI and the Annexes relating thereto, with respect to activities in the Area, that question shall be referred to the Seabed Disputes Chamber for a ruling.

(b) If, at the commencement of or in the course of such arbitration, the arbitral tribunal determines, either at the request of any party to the dispute or *proprio motu*, that its decision depends upon a ruling of the Seabed Disputes Chamber, the arbitral tribunal shall refer such question to the Seabed Disputes Chamber for such ruling. The arbitral tribunal shall then proceed to render its award in conformity with the ruling of the Seabed Disputes Chamber.

(c) In the absence of a provision in the contract on the arbitration procedure to be applied in the dispute, the arbitration shall be conducted in accordance with the UNCITRAL Arbitration Rules or such other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority, unless the parties to the dispute otherwise agree.

#### **Article 189. Limitation on jurisdiction with regard to decisions of the Authority**

The Seabed Disputes Chamber shall have no jurisdiction with regard to the exercise by the Authority of its discretionary powers in accordance with this Part; in no case shall it substitute its discretion for that of the Authority. Without prejudice to article 191, in exercising its jurisdiction pursuant to article 187, the Seabed Disputes Chamber shall not pronounce itself on the question of whether any rules, regulations and procedures of the Authority are in conformity with this Convention, nor declare invalid any such rules, regulations and procedures. Its jurisdiction in this regard shall be confined to deciding claims that the application of any rules, regulations and procedures of the Authority in individual cases would be in conflict with the contractual obligations of the parties to the dispute or their obligations under this Convention, claims concerning excess of jurisdiction or misuse of power, and to claims for damages to be paid or other remedy to be given to the party concerned for the failure of the other party to comply with its contractual obligations or its obligations under this Convention.

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**Article 190. Participation and appearance of sponsoring States Parties in proceedings**

1. If a natural or juridical person is a party to a dispute referred to in article 187, the sponsoring State shall be given notice thereof and shall have the right to participate in the proceedings by submitting written or oral statements.
2. If an action is brought against a State Party by a natural or juridical person sponsored by another State Party in a dispute referred to in article 187, subparagraph (c), the respondent State may request the State sponsoring that person to appear in the proceedings on behalf of that person. Failing such appearance, the respondent State may arrange to be represented by a juridical person of its nationality.

**Article 191. Advisory opinions**

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

## **Part XII**

### **Protection and preservation of the marine environment**

#### **Section 1**

##### **General provisions**

**Article 192. General obligation**

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

**Article 193. Sovereign right of States to exploit their natural resources**

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

**Article 194. Measures to prevent, reduce and control pollution of the marine environment**

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

2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.
3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, *inter alia*, those designed to minimize to the fullest possible extent:
  - (a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;
  - (b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;
  - (c) pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;
  - (d) pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.
4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention.
5. The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

**Article 195. Duty not to transfer damage or hazards or transform one type of pollution into another**

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

**Article 196. Use of technologies or introduction of alien or new species**

1. States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto.
2. This article does not affect the application of this Convention regarding the prevention, reduction and control of pollution of the marine environment.

**Section 2  
Global and regional cooperation****Article 197. Cooperation on a global or regional basis**

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

**Article 198. Notification of imminent or actual damage**

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

**Article 199. Contingency plans against pollution**

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

**Article 200. Studies, research programmes and exchange of information and data**

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

**Article 201. Scientific criteria for regulations**

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

**Section 3  
Technical assistance****Article 202. Scientific and technical assistance to developing States**

States shall, directly or through competent international organizations:

- (a) promote programmes of scientific, educational, technical and other assistance to developing States for the protection and preservation of the marine environment and the prevention, reduction and control of marine pollution. Such assistance shall include, *inter alia*:
  - (i) training of their scientific and technical personnel;
  - (ii) facilitating their participation in relevant international programmes;
  - (iii) supplying them with necessary equipment and facilities;
  - (iv) enhancing their capacity to manufacture such equipment;
  - (v) advice on and developing facilities for research, monitoring, educational and other programmes;
- (b) provide appropriate assistance, especially to developing States, for the minimization of the effects of major incidents which may cause serious pollution of the marine environment;
- (c) provide appropriate assistance, especially to developing States, concerning the preparation of environmental assessments.

**Article 203. Preferential treatment for developing States**

Developing States shall, for the purposes of prevention, reduction and control of pollution of the marine environment or minimization of its effects, be granted preference by international organizations in:

- (a) the allocation of appropriate funds and technical assistance; and
- (b) the utilization of their specialized services.

## **Section 4**

### **Monitoring and environmental assessment**

#### **Article 204. Monitoring of the risks or effects of pollution**

1. States shall, consistent with the rights of other States, endeavour, as far as practicable, directly or through the competent international organizations, to observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution of the marine environment.
2. In particular, States shall keep under surveillance the effects of any activities which they permit or in which they engage in order to determine whether these activities are likely to pollute the marine environment.

#### **Article 205. Publication of reports**

States shall publish reports of the results obtained pursuant to article 204 or provide such reports at appropriate intervals to the competent international organizations, which should make them available to all States.

#### **Article 206. Assessment of potential effects of activities**

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.

## **Section 5**

### **International rules and national legislation to prevent, reduce and control pollution of the marine environment**

#### **Article 207. Pollution from land-based sources**

1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.
2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
3. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.
4. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards

and recommended practices and procedures to prevent, reduce and control pollution of the marine environment from land-based sources, taking into account characteristic regional features, the economic capacity of developing States and their need for economic development. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

5. Laws, regulations, measures, rules, standards and recommended practices and procedures referred to in paragraphs 1, 2 and 4 shall include those designed to minimize, to the fullest extent possible, the release of toxic, harmful or noxious substances, especially those which are persistent, into the marine environment.

#### **Article 208. Pollution from seabed activities subject to national jurisdiction**

1. Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.
2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
3. Such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedures.
4. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.
5. States, acting especially through competent international organizations or diplomatic conference, shall establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment referred to in paragraph 1. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

#### **Article 209. Pollution from activities in the Area**

1. International rules, regulations and procedures shall be established in accordance with Part XI to prevent, reduce and control pollution of the marine environment from activities in the Area. Such rules, regulations and procedures shall be re-examined from time to time as necessary.
2. Subject to the relevant provisions of this section, States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be. The requirements of such laws and regulations shall be no less



effective than the international rules, regulations and procedures referred to in paragraph 1.

#### **Article 210. Pollution by dumping**

- (a) States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment by dumping.
- (b) States shall take other measures as may be necessary to prevent, reduce and control such pollution.
- (c) Such laws, regulations and measures shall ensure that dumping is not carried out without the permission of the competent authorities of States.
- (d) States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.
- (e) Dumping within the territorial sea and the exclusive economic zone or onto the continental shelf shall not be carried out without the express prior approval of the coastal State, which has the right to permit, regulate and control such dumping after due consideration of the matter with other States which by reason of their geographical situation may be adversely affected thereby.
- (f) National laws, regulations and measures shall be no less effective in preventing, reducing and controlling such pollution than the global rules and standards.

#### **Article 211. Pollution from vessels**

- (a) States, acting through the competent international organization or general diplomatic conference, shall establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary.
- (b) States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry. Such laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.
- (c) States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the

entry of foreign vessels into their ports or internal waters or for a call at their off-shore terminals shall give due publicity to such requirements and shall communicate them to the competent international organization. Whenever such requirements are established in identical form by two or more coastal States in an endeavour to harmonize policy, the communication shall indicate which States are participating in such cooperative arrangements. Every State shall require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in such cooperative arrangements, to furnish, upon the request of that State, information as to whether it is proceeding to a State of the same region participating in such cooperative arrangements and, if so, to indicate whether it complies with the port entry requirements of that State. This article is without prejudice to the continued exercise by a vessel of its right of innocent passage or to the application of article 25, paragraph 2.

- (d) Coastal States may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage. Such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels.
- (e) Coastal States, for the purpose of enforcement as provided for in section 6, may in respect of their exclusive economic zones adopt laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to generally accepted international rules and standards established through the competent international organization or general diplomatic conference.
  - (a) Where the international rules and standards referred to in paragraph 1 are inadequate to meet special circumstances and coastal States have reasonable grounds for believing that a particular, clearly defined area of their respective exclusive economic zones is an area where the adoption of special mandatory measures for the prevention of pollution from vessels is required for recognized technical reasons in relation to its oceanographical and ecological conditions, as well as its utilization or the protection of its resources and the particular character of its traffic, the coastal States, after appropriate consultations through the competent international organization with any other States concerned, may, for that area, direct a communication to that organization, submitting scientific and technical evidence in support and information on necessary reception facilities. Within 12 months after receiving such a communication, the organization shall determine whether the conditions in that area correspond to the requirements set out above. If the organization so determines, the coastal States may, for that area, adopt laws and regulations for the prevention, reduction and control of pollution from vessels implement-

- ing such international rules and standards or navigational practices as are made applicable, through the organization, for special areas. These laws and regulations shall not become applicable to foreign vessels until 15 months after the submission of the communication to the organization.
- (b) The coastal States shall publish the limits of any such particular, clearly defined area.
  - (c) If the coastal States intend to adopt additional laws and regulations for the same area for the prevention, reduction and control of pollution from vessels, they shall, when submitting the aforesaid communication, at the same time notify the organization thereof. Such additional laws and regulations may relate to discharges or navigational practices but shall not require foreign vessels to observe design, construction, manning or equipment standards other than generally accepted international rules and standards; they shall become applicable to foreign vessels 15 months after the submission of the communication to the organization, provided that the organization agrees within 12 months after the submission of the communication.
  - (f) The international rules and standards referred to in this article should include *inter alia* those relating to prompt notification to coastal States, whose coastline or related interests may be affected by incidents, including maritime casualties, which involve discharges or probability of discharges.

#### **Article 212. Pollution from or through the atmosphere**

- (a) States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, applicable to the air space under their sovereignty and to vessels flying their flag or vessels or aircraft of their registry, taking into account internationally agreed rules, standards and recommended practices and procedures and the safety of air navigation.
- (b) States shall take other measures as may be necessary to prevent, reduce and control such pollution.
- (c) States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution.

### **Section 6 Enforcement**

#### **Article 213. Enforcement with respect to pollution from land-based sources**

States shall enforce their laws and regulations adopted in accordance with article 207 and shall adopt laws and regulations and take other measures necessary to

implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from land-based sources.

**Article 214. Enforcement with respect to pollution from seabed activities**

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

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

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

**Article 216. Enforcement with respect to pollution by dumping**

- (a) Laws and regulations adopted in accordance with this Convention and applicable international rules and standards established through competent international organizations or diplomatic conference for the prevention, reduction and control of pollution of the marine environment by dumping shall be enforced:
  - (a) by the coastal State with regard to dumping within its territorial sea or its exclusive economic zone or onto its continental shelf;
  - (b) by the flag State with regard to vessels flying its flag or vessels or aircraft of its registry;
  - (c) by any State with regard to acts of loading of wastes or other matter occurring within its territory or at its off-shore terminals.
- (b) No State shall be obliged by virtue of this article to institute proceedings when another State has already instituted proceedings in accordance with this article.

**Article 217. Enforcement by flag States**

- (a) States shall ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards, established through the competent international organization or general diplomatic conference, and with their laws and regulations adopted in accordance with this Convention for

the prevention, reduction and control of pollution of the marine environment from vessels and shall accordingly adopt laws and regulations and take other measures necessary for their implementation. Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.

- (b) States shall, in particular, take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing, until they can proceed to sea in compliance with the requirements of the international rules and standards referred to in paragraph 1, including requirements in respect of design, construction, equipment and manning of vessels.
- (c) States shall ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to international rules and standards referred to in paragraph 1. States shall ensure that vessels flying their flag are periodically inspected in order to verify that such certificates are in conformity with the actual condition of the vessels. These certificates shall be accepted by other States as evidence of the condition of the vessels and shall be regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.
- (d) If a vessel commits a violation of rules and standards established through the competent international organization or general diplomatic conference, the flag State, without prejudice to articles 218, 220 and 228, shall provide for immediate investigation and where appropriate institute proceedings in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted.
- (e) Flag States conducting an investigation of the violation may request the assistance of any other State whose cooperation could be useful in clarifying the circumstances of the case. States shall endeavour to meet appropriate requests of flag States.
- (f) States shall, at the written request of any State, investigate any violation alleged to have been committed by vessels flying their flag. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, flag States shall without delay institute such proceedings in accordance with their laws.
- (g) Flag States shall promptly inform the requesting State and the competent international organization of the action taken and its outcome. Such information shall be available to all States.
- (h) Penalties provided for by the laws and regulations of States for vessels flying their flag shall be adequate in severity to discourage violations wherever they occur.

**Article 218. Enforcement by port States**

- (a) When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside the internal waters, territorial sea or exclusive economic zone of that State in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference.
- (b) No proceedings pursuant to paragraph 1 shall be instituted in respect of a discharge violation in the internal waters, territorial sea or exclusive economic zone of another State unless requested by that State, the flag State, or a State damaged or threatened by the discharge violation, or unless the violation has caused or is likely to cause pollution in the internal waters, territorial sea or exclusive economic zone of the State instituting the proceedings.
- (c) When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State shall, as far as practicable, comply with requests from any State for investigation of a discharge violation referred to in paragraph 1, believed to have occurred in, caused, or threatened damage to the internal waters, territorial sea or exclusive economic zone of the requesting State. It shall likewise, as far as practicable, comply with requests from the flag State for investigation of such a violation, irrespective of where the violation occurred.
- (d) The records of the investigation carried out by a port State pursuant to this article shall be transmitted upon request to the flag State or to the coastal State. Any proceedings instituted by the port State on the basis of such an investigation may, subject to section 7, be suspended at the request of the coastal State when the violation has occurred within its internal waters, territorial sea or exclusive economic zone. The evidence and records of the case, together with any bond or other financial security posted with the authorities of the port State, shall in that event be transmitted to the coastal State. Such transmittal shall preclude the continuation of proceedings in the port State.

**Article 219. Measures relating to seaworthiness of vessels to avoid pollution**

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

**Article 220. Enforcement by coastal States**

- (a) When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may, subject to section 7, institute proceedings in respect of any violation of its laws and regulations adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels when the violation has occurred within the territorial sea or the exclusive economic zone of that State.
- (b) Where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated laws and regulations of that State adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels, that State, without prejudice to the application of the relevant provisions of Part II, section 3, may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws, subject to the provisions of section 7.
- (c) Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that State conforming and giving effect to such rules and standards, that State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.
- (d) States shall adopt laws and regulations and take other measures so that vessels flying their flag comply with requests for information pursuant to paragraph 3.
- (e) Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a substantial discharge causing or threatening significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.
- (f) Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone, that State may, subject to section 7, provided that the evidence

so warrants, institute proceedings, including detention of the vessel, in accordance with its laws.

- (g) Notwithstanding the provisions of paragraph 6, whenever appropriate procedures have been established, either through the competent international organization or as otherwise agreed, whereby compliance with requirements for bonding or other appropriate financial security has been assured, the coastal State if bound by such procedures shall allow the vessel to proceed.
- (h) The provisions of paragraphs 3, 4, 5, 6 and 7 also apply in respect of national laws and regulations adopted pursuant to article 211, paragraph 6.

#### **Article 221. Measures to avoid pollution arising from maritime casualties**

- (a) Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.
- (b) For the purposes of this article, “maritime casualty” means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.

#### **Article 222. Enforcement with respect to pollution from or through the atmosphere**

States shall enforce, within the air space under their sovereignty or with regard to vessels flying their flag or vessels or aircraft of their registry, their laws and regulations adopted in accordance with article 212, paragraph 1, and with other provisions of this Convention and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from or through the atmosphere, in conformity with all relevant international rules and standards concerning the safety of air navigation.

### **Section 7 Safeguards**

#### **Article 223. Measures to facilitate proceedings**

In proceedings instituted pursuant to this Part, States shall take measures to facilitate the hearing of witnesses and the admission of evidence submitted by authorities



of another State, or by the competent international organization, and shall facilitate the attendance at such proceedings of official representatives of the competent international organization, the flag State and any State affected by pollution arising out of any violation. The official representatives attending such proceedings shall have such rights and duties as may be provided under national laws and regulations or international law.

#### **Article 224. Exercise of powers of enforcement**

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

#### **Article 225. Duty to avoid adverse consequences in the exercise of the powers of enforcement**

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

#### **Article 226. Investigation of foreign vessels**

- (a) (a) States shall not delay a foreign vessel longer than is essential for purposes of the investigations provided for in articles 216, 218 and 220. Any physical inspection of a foreign vessel shall be limited to an examination of such certificates, records or other documents as the vessel is required to carry by generally accepted international rules and standards or of any similar documents which it is carrying; further physical inspection of the vessel may be undertaken only after such an examination and only when:
- (i) there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents;
  - (ii) the contents of such documents are not sufficient to confirm or verify a suspected violation; or
  - (iii) the vessel is not carrying valid certificates and records.
- (b) If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the protection and preservation of the marine environment, release shall be made promptly subject to reasonable procedures such as bonding or other appropriate financial security.

- (c) Without prejudice to applicable international rules and standards relating to the seaworthiness of vessels, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard. Where release has been refused or made conditional, the flag State of the vessel must be promptly notified, and may seek release of the vessel in accordance with Part XV.
3. States shall cooperate to develop procedures for the avoidance of unnecessary physical inspection of vessels at sea.

#### **Article 227. Non-discrimination with respect to foreign vessels**

In exercising their rights and performing their duties under this Part, States shall not discriminate in form or in fact against vessels of any other State.

#### **Article 228. Suspension and restrictions on institution of proceedings**

1. Proceedings to impose penalties in respect of any violation of applicable laws and regulations or international rules and standards relating to the prevention, reduction and control of pollution from vessels committed by a foreign vessel beyond the territorial sea of the State instituting proceedings shall be suspended upon the taking of proceedings to impose penalties in respect of corresponding charges by the flag State within six months of the date on which proceedings were first instituted, unless those proceedings relate to a case of major damage to the coastal State or the flag State in question has repeatedly disregarded its obligation to enforce effectively the applicable international rules and standards in respect of violations committed by its vessels. The flag State shall in due course make available to the State previously instituting proceedings a full dossier of the case and the records of the proceedings, whenever the flag State has requested the suspension of proceedings in accordance with this article. When proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings shall be terminated. Upon payment of costs incurred in respect of such proceedings, any bond posted or other financial security provided in connection with the suspended proceedings shall be released by the coastal State.
2. Proceedings to impose penalties on foreign vessels shall not be instituted after the expiry of three years from the date on which the violation was committed, and shall not be taken by any State in the event of proceedings having been instituted by another State subject to the provisions set out in paragraph 1.
3. The provisions of this article are without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws irrespective of prior proceedings by another State.

**Article 229. Institution of civil proceedings**

Nothing in this Convention affects the institution of civil proceedings in respect of any claim for loss or damage resulting from pollution of the marine environment.

**Article 230. Monetary penalties and the observance of recognized rights of the accused**

1. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels beyond the territorial sea.
2. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.
3. In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties, recognized rights of the accused shall be observed.

**Article 231. Notification to the flag State and other States concerned**

States shall promptly notify the flag State and any other State concerned of any measures taken pursuant to section 6 against foreign vessels, and shall submit to the flag State all official reports concerning such measures. However, with respect to violations committed in the territorial sea, the foregoing obligations of the coastal State apply only to such measures as are taken in proceedings. The diplomatic agents or consular officers and where possible the maritime authority of the flag State, shall be immediately informed of any such measures taken pursuant to section 6 against foreign vessels.

**Article 232. Liability of States arising from enforcement measures**

States shall be liable for damage or loss attributable to them arising from measures taken pursuant to section 6 when such measures are unlawful or exceed those reasonably required in the light of available information. States shall provide for recourse in their courts for actions in respect of such damage or loss.

**Article 233. Safeguards with respect to straits used for international navigation**

Nothing in sections 5, 6 and 7 affects the legal regime of straits used for international navigation. However, if a foreign ship other than those referred to in section 10 has committed a violation of the laws and regulations referred to in article 42, paragraph 1(a)

and (b), causing or threatening major damage to the marine environment of the straits, the States bordering the straits may take appropriate enforcement measures and if so shall respect *mutatis mutandis* the provisions of this section.

## **Section 8** **Ice-covered areas**

### **Article 234. Ice-covered areas**

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

## **Section 9** **Responsibility and liability**

### **Article 235. Responsibility and liability**

1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.
2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.
3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.

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## **Section 10**

### **Sovereign immunity**

#### **Article 236. Sovereign immunity**

The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.

## **Section 11**

### **Obligations under other conventions on the protection and preservation of the marine environment**

#### **Article 237. Obligations under other conventions on the protection and preservation of the marine environment**

1. The provisions of this Part are without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously which relate to the protection and preservation of the marine environment and to agreements which may be concluded in furtherance of the general principles set forth in this Convention.
2. Specific obligations assumed by States under special conventions, with respect to the protection and preservation of the marine environment, should be carried out in a manner consistent with the general principles and objectives of this Convention.

## **Part XIII**

### **Marine scientific research**

#### **Section 1**

##### **General provisions**

#### **Article 238. Right to conduct marine scientific research**

All States, irrespective of their geographical location, and competent international organizations have the right to conduct marine scientific research subject to the rights and duties of other States as provided for in this Convention.

#### **Article 239. Promotion of marine scientific research**

States and competent international organizations shall promote and facilitate the development and conduct of marine scientific research in accordance with this Convention.

**Article 240. General principles for the conduct of marine scientific research**

In the conduct of marine scientific research the following principles shall apply:

- (a) marine scientific research shall be conducted exclusively for peaceful purposes;
- (b) marine scientific research shall be conducted with appropriate scientific methods and means compatible with this Convention;
- (c) marine scientific research shall not unjustifiably interfere with other legitimate uses of the sea compatible with this Convention and shall be duly respected in the course of such uses;
- (d) marine scientific research shall be conducted in compliance with all relevant regulations adopted in conformity with this Convention including those for the protection and preservation of the marine environment.

**Article 241. Non-recognition of marine scientific research activities as the legal basis for claims**

Marine scientific research activities shall not constitute the legal basis for any claim to any part of the marine environment or its resources.

## **Section 2 International cooperation**

**Article 242. Promotion of international cooperation**

1. States and competent international organizations shall, in accordance with the principle of respect for sovereignty and jurisdiction and on the basis of mutual benefit, promote international cooperation in marine scientific research for peaceful purposes.
2. In this context, without prejudice to the rights and duties of States under this Convention, a State, in the application of this Part, shall provide, as appropriate, other States with a reasonable opportunity to obtain from it, or with its cooperation, information necessary to prevent and control damage to the health and safety of persons and to the marine environment.

**Article 243. Creation of favourable conditions**

States and competent international organizations shall cooperate, through the conclusion of bilateral and multilateral agreements, to create favourable conditions for the conduct of marine scientific research in the marine environment and to integrate the efforts of scientists in studying the essence of phenomena and processes occurring in the marine environment and the interrelations between them.

**Article 244. Publication and dissemination of information and knowledge**

1. States and competent international organizations shall, in accordance with this Convention, make available by publication and dissemination through appropriate channels information on proposed major programmes and their objectives as well as knowledge resulting from marine scientific research.
2. For this purpose, States, both individually and in cooperation with other States and with competent international organizations, shall actively promote the flow of scientific data and information and the transfer of knowledge resulting from marine scientific research, especially to developing States, as well as the strengthening of the autonomous marine scientific research capabilities of developing States through, *inter alia*, programmes to provide adequate education and training of their technical and scientific personnel.

**Section 3****Conduct and promotion of marine scientific research****Article 245. Marine scientific research in the territorial sea**

Coastal States, in the exercise of their sovereignty, have the exclusive right to regulate, authorize and conduct marine scientific research in their territorial sea. Marine scientific research therein shall be conducted only with the express consent of and under the conditions set forth by the coastal State.

**Article 246. Marine scientific research in the exclusive economic zone and on the continental shelf**

1. Coastal States, in the exercise of their jurisdiction, have the right to regulate, authorize and conduct marine scientific research in their exclusive economic zone and on their continental shelf in accordance with the relevant provisions of this Convention.
2. Marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal State.
3. Coastal States shall, in normal circumstances, grant their consent for marine scientific research projects by other States or competent international organizations in their exclusive economic zone or on their continental shelf to be carried out in accordance with this Convention exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all mankind. To this end, coastal States shall establish rules and procedures ensuring that such consent will not be delayed or denied unreasonably.
4. For the purposes of applying paragraph 3, normal circumstances may exist in spite of the absence of diplomatic relations between the coastal State and the researching State.

5. Coastal States may however in their discretion withhold their consent to the conduct of a marine scientific research project of another State or competent international organization in the exclusive economic zone or on the continental shelf of the coastal State if that project:
  - (a) is of direct significance for the exploration and exploitation of natural resources, whether living or non-living;
  - (b) involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment;
  - (c) involves the construction, operation or use of artificial islands, installations and structures referred to in articles 60 and 80;
  - (d) contains information communicated pursuant to article 248 regarding the nature and objectives of the project which is inaccurate or if the researching State or competent international organization has outstanding obligations to the coastal State from a prior research project.
6. Notwithstanding the provisions of paragraph 5, coastal States may not exercise their discretion to withhold consent under subparagraph (a) of that paragraph in respect of marine scientific research projects to be undertaken in accordance with the provisions of this Part on the continental shelf, beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, outside those specific areas which coastal States may at any time publicly designate as areas in which exploitation or detailed exploratory operations focused on those areas are occurring or will occur within a reasonable period of time. Coastal States shall give reasonable notice of the designation of such areas, as well as any modifications thereto, but shall not be obliged to give details of the operations therein.
7. The provisions of paragraph 6 are without prejudice to the rights of coastal States over the continental shelf as established in article 77.
8. Marine scientific research activities referred to in this article shall not unjustifiably interfere with activities undertaken by coastal States in the exercise of their sovereign rights and jurisdiction provided for in this Convention.

**Article 247. Marine scientific research projects undertaken by or under the auspices of international organizations**

A coastal State which is a member of or has a bilateral agreement with an international organization, and in whose exclusive economic zone or on whose continental shelf that organization wants to carry out a marine scientific research project, directly or under its auspices, shall be deemed to have authorized the project to be carried out in conformity with the agreed specifications if that State approved the detailed project when the decision was made by the organization for the undertaking of the project, or is willing to participate in it, and has not expressed any objection within four months of notification of the project by the organization to the coastal State.



**Article 248. Duty to provide information to the coastal State**

States and competent international organizations which intend to undertake marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall, not less than six months in advance of the expected starting date of the marine scientific research project, provide that State with a full description of:

- (a) the nature and objectives of the project;
- (b) the method and means to be used, including name, tonnage, type and class of vessels and a description of scientific equipment;
- (c) the precise geographical areas in which the project is to be conducted;
- (d) the expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;
- (e) the name of the sponsoring institution, its director, and the person in charge of the project; and
- (f) the extent to which it is considered that the coastal State should be able to participate or to be represented in the project.

**Article 249. Duty to comply with certain conditions**

1. States and competent international organizations when undertaking marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall comply with the following conditions:
  - (a) ensure the right of the coastal State, if it so desires, to participate or be represented in the marine scientific research project, especially on board research vessels and other craft or scientific research installations, when practicable, without payment of any remuneration to the scientists of the coastal State and without obligation to contribute towards the costs of the project;
  - (b) provide the coastal State, at its request, with preliminary reports, as soon as practicable, and with the final results and conclusions after the completion of the research;
  - (c) undertake to provide access for the coastal State, at its request, to all data and samples derived from the marine scientific research project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value;
  - (d) if requested, provide the coastal State with an assessment of such data, samples and research results or provide assistance in their assessment or interpretation;
  - (e) ensure, subject to paragraph 2, that the research results are made internationally available through appropriate national or international channels, as soon as practicable;

- (f) inform the coastal State immediately of any major change in the research programme;
  - (g) unless otherwise agreed, remove the scientific research installations or equipment once the research is completed.
2. This article is without prejudice to the conditions established by the laws and regulations of the coastal State for the exercise of its discretion to grant or withhold consent pursuant to article 246, paragraph 5, including requiring prior agreement for making internationally available the research results of a project of direct significance for the exploration and exploitation of natural resources.

#### **Article 250. Communications concerning marine scientific research projects**

Communications concerning the marine scientific research projects shall be made through appropriate official channels, unless otherwise agreed.

#### **Article 251. General criteria and guidelines**

States shall seek to promote through competent international organizations the establishment of general criteria and guidelines to assist States in ascertaining the nature and implications of marine scientific research.

#### **Article 252. Implied consent**

States or competent international organizations may proceed with a marine scientific research project six months after the date upon which the information required pursuant to article 248 was provided to the coastal State unless within four months of the receipt of the communication containing such information the coastal State has informed the State or organization conducting the research that:

- (a) it has withheld its consent under the provisions of article 246; or
- (b) the information given by that State or competent international organization regarding the nature or objectives of the project does not conform to the manifestly evident facts; or
- (c) it requires supplementary information relevant to conditions and the information provided for under articles 248 and 249; or
- (d) outstanding obligations exist with respect to a previous marine scientific research project carried out by that State or organization, with regard to conditions established in article 249.

**Article 253. Suspension or cessation of marine scientific research activities**

1. A coastal State shall have the right to require the suspension of any marine scientific research activities in progress within its exclusive economic zone or on its continental shelf if:
  - (a) the research activities are not being conducted in accordance with the information communicated as provided under article 248 upon which the consent of the coastal State was based; or
  - (b) the State or competent international organization conducting the research activities fails to comply with the provisions of article 249 concerning the rights of the coastal State with respect to the marine scientific research project.
2. A coastal State shall have the right to require the cessation of any marine scientific research activities in case of any non-compliance with the provisions of article 248 which amounts to a major change in the research project or the research activities.
3. A coastal State may also require cessation of marine scientific research activities if any of the situations contemplated in paragraph 1 are not rectified within a reasonable period of time.
4. Following notification by the coastal State of its decision to order suspension or cessation, States or competent international organizations authorized to conduct marine scientific research activities shall terminate the research activities that are the subject of such a notification.
5. An order of suspension under paragraph 1 shall be lifted by the coastal State and the marine scientific research activities allowed to continue once the researching State or competent international organization has complied with the conditions required under articles 248 and 249.

**Article 254. Rights of neighbouring land-locked and geographically disadvantaged States**

1. States and competent international organizations which have submitted to a coastal State a project to undertake marine scientific research referred to in article 246, paragraph 3, shall give notice to the neighbouring land-locked and geographically disadvantaged States of the proposed research project, and shall notify the coastal State thereof.
2. After the consent has been given for the proposed marine scientific research project by the coastal State concerned, in accordance with article 246 and other relevant provisions of this Convention, States and competent international organizations undertaking such a project shall provide to the neighbouring land-locked and geographically disadvantaged States, at their request and when appropriate, relevant information as specified in article 248 and article 249, paragraph 1(f).

3. The neighbouring land-locked and geographically disadvantaged States referred to above shall, at their request, be given the opportunity to participate, whenever feasible, in the proposed marine scientific research project through qualified experts appointed by them and not objected to by the coastal State, in accordance with the conditions agreed for the project, in conformity with the provisions of this Convention, between the coastal State concerned and the State or competent international organizations conducting the marine scientific research.
4. States and competent international organizations referred to in paragraph 1 shall provide to the above-mentioned land-locked and geographically disadvantaged States, at their request, the information and assistance specified in article 249, paragraph 1(d), subject to the provisions of article 249, paragraph 2.

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

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

**Article 256. Marine scientific research in the Area**

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

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

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

**Section 4**  
**Scientific research installations of equipment in the marine environment**

**Article 258. Deployment and use**

The deployment and use of any type of scientific research installations or equipment in any area of the marine environment shall be subject to the same conditions as are

prescribed in this Convention for the conduct of marine scientific research in any such area.

#### **Article 259. Legal status**

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

#### **Article 260. Safety zones**

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

#### **Article 261. Non-interference with shipping routes**

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

#### **Article 262. Identification markings and warning signals**

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

### **Section 5 Responsibility and liability**

#### **Article 263. Responsibility and liability**

1. States and competent international organizations shall be responsible for ensuring that marine scientific research, whether undertaken by them or on their behalf, is conducted in accordance with this Convention.
2. States and competent international organizations shall be responsible and liable for the measures they take in contravention of this Convention in respect of marine scientific research conducted by other States, their natural or juridical persons or by competent international organizations, and shall provide compensation for damage resulting from such measures.

3. States and competent international organizations shall be responsible and liable pursuant to article 235 for damage caused by pollution of the marine environment arising out of marine scientific research undertaken by them or on their behalf.

## **Section 6**

### **Settlement of disputes and interim measures**

#### **Article 264. Settlement of disputes**

Disputes concerning the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be settled in accordance with Part XV, sections 2 and 3.

#### **Article 265. Interim measures**

Pending settlement of a dispute in accordance with Part XV, sections 2 and 3, the State or competent international organization authorized to conduct a marine scientific research project shall not allow research activities to commence or continue without the express consent of the coastal State concerned.

## **Part XIV**

### **Development and transfer of marine technology**

#### **Section 1**

##### **General provisions**

#### **Article 266. Promotion of the development and transfer of marine technology**

1. States, directly or through competent international organizations, shall cooperate in accordance with their capabilities to promote actively the development and transfer of marine science and marine technology on fair and reasonable terms and conditions.
2. States shall promote the development of the marine scientific and technological capacity of States which may need and request technical assistance in this field, particularly developing States, including land-locked and geographically disadvantaged States, with regard to the exploration, exploitation, conservation and management of marine resources, the protection and preservation of the marine environment, marine scientific research and other activities in the marine environment compatible with this Convention, with a view to accelerating the social and economic development of the developing States.
3. States shall endeavour to foster favourable economic and legal conditions for the transfer of marine technology for the benefit of all parties concerned on an equitable basis.

**Article 267. Protection of legitimate interests**

States, in promoting cooperation pursuant to article 266, shall have due regard for all legitimate interests including, *inter alia*, the rights and duties of holders, suppliers and recipients of marine technology.

**Article 268. Basic objectives**

States, directly or through competent international organizations, shall promote:

- (a) the acquisition, evaluation and dissemination of marine technological knowledge and facilitate access to such information and data;
- (b) the development of appropriate marine technology;
- (c) the development of the necessary technological infrastructure to facilitate the transfer of marine technology;
- (d) the development of human resources through training and education of nationals of developing States and countries and especially the nationals of the least developed among them;
- (e) international cooperation at all levels, particularly at the regional, subregional and bilateral levels.

**Article 269. Measures to achieve the basic objectives**

In order to achieve the objectives referred to in article 268, States, directly or through competent international organizations, shall endeavour, *inter alia*, to:

- (a) establish programmes of technical cooperation for the effective transfer of all kinds of marine technology to States which may need and request technical assistance in this field, particularly the developing land-locked and geographically disadvantaged States, as well as other developing States which have not been able either to establish or develop their own technological capacity in marine science and in the exploration and exploitation of marine resources or to develop the infrastructure of such technology;
- (b) promote favourable conditions for the conclusion of agreements, contracts and other similar arrangements, under equitable and reasonable conditions;
- (c) hold conferences, seminars and symposia on scientific and technological subjects, in particular on policies and methods for the transfer of marine technology;
- (d) promote the exchange of scientists and of technological and other experts;
- (e) undertake projects and promote joint ventures and other forms of bilateral and multilateral cooperation.

## **Section 2**

### **International cooperation**

#### **Article 270. Ways and means of international cooperation**

International cooperation for the development and transfer of marine technology shall be carried out, where feasible and appropriate, through existing bilateral, regional or multilateral programmes, and also through expanded and new programmes in order to facilitate marine scientific research, the transfer of marine technology, particularly in new fields, and appropriate international funding for ocean research and development.

#### **Article 271. Guidelines, criteria and standards**

States, directly or through competent international organizations, shall promote the establishment of generally accepted guidelines, criteria and standards for the transfer of marine technology on a bilateral basis or within the framework of international organizations and other fora, taking into account, in particular, the interests and needs of developing States.

#### **Article 272. Coordination of international programmes**

In the field of transfer of marine technology, States shall endeavour to ensure that competent international organizations coordinate their activities, including any regional or global programmes, taking into account the interests and needs of developing States, particularly land-locked and geographically disadvantaged States.

#### **Article 273. Cooperation with international organizations and the Authority**

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

#### **Article 274. Objectives of the Authority**

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

- (a) on the basis of the principle of equitable geographical distribution, nationals of developing States, whether coastal, land-locked or geographically disadvantaged, shall be taken on for the purposes of training as members of the managerial, research and technical staff constituted for its undertakings;
- (b) the technical documentation on the relevant equipment, machinery, devices and processes is made available to all States, in particular developing States which may need and request technical assistance in this field;



- (c) adequate provision is made by the Authority to facilitate the acquisition of technical assistance in the field of marine technology by States which may need and request it, in particular developing States, and the acquisition by their nationals of the necessary skills and know-how, including professional training;
- (d) States which may need and request technical assistance in this field, in particular developing States, are assisted in the acquisition of necessary equipment, processes, plant and other technical know-how through any financial arrangements provided for in this Convention.

### Section 3

#### National and regional marine scientific and technological centres

##### Article 275. Establishment of national centres

1. States, directly or through competent international organizations and the Authority, shall promote the establishment, particularly in developing coastal States, of national marine scientific and technological research centres and the strengthening of existing national centres, in order to stimulate and advance the conduct of marine scientific research by developing coastal States and to enhance their national capabilities to utilize and preserve their marine resources for their economic benefit.
2. States, through competent international organizations and the Authority, shall give adequate support to facilitate the establishment and strengthening of such national centres so as to provide for advanced training facilities and necessary equipment, skills and know-how as well as technical experts to such States which may need and request such assistance.

##### Article 276. Establishment of regional centres

1. States, in coordination with the competent international organizations, the Authority and national marine scientific and technological research institutions, shall promote the establishment of regional marine scientific and technological research centres, particularly in developing States, in order to stimulate and advance the conduct of marine scientific research by developing States and foster the transfer of marine technology.
2. All States of a region shall cooperate with the regional centres therein to ensure the more effective achievement of their objectives.

##### Article 277. Functions of regional centres

The functions of such regional centres shall include, *inter alia*:

- (a) training and educational programmes at all levels on various aspects of marine scientific and technological research, particularly marine biology, including conservation and management of living resources, oceanography, hydrography, engineering, geological exploration of the seabed, mining and desalination technologies;
- (b) management studies;
- (c) study programmes related to the protection and preservation of the marine environment and the prevention, reduction and control of pollution;
- (d) organization of regional conferences, seminars and symposia;
- (e) acquisition and processing of marine scientific and technological data and information;
- (f) prompt dissemination of results of marine scientific and technological research in readily available publications;
- (g) publicizing national policies with regard to the transfer of marine technology and systematic comparative study of those policies;
- (h) compilation and systematization of information on the marketing of technology and on contracts and other arrangements concerning patents;
- (i) technical cooperation with other States of the region.

#### **Section 4 Cooperation among international organizations**

##### **Article 278. Cooperation among international organizations**

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

## **Part XV Settlement of disputes**

### **Section 1 General provisions**

#### **Article 279. Obligation to settle disputes by peaceful means**

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

**Article 280. Settlement of disputes by any peaceful means chosen by the parties**

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

**Article 281. Procedure where no settlement has been reached by the parties**

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

**Article 282. Obligations under general, regional or bilateral agreements**

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

**Article 283. Obligation to exchange views**

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

**Article 284. Conciliation**

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

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<sup>1</sup>See: p. 417.

2. If the invitation is accepted and if the parties agree upon the conciliation procedure to be applied, any party may submit the dispute to that procedure.
3. If the invitation is not accepted or the parties do not agree upon the procedure, the conciliation proceedings shall be deemed to be terminated.
4. Unless the parties otherwise agree, when a dispute has been submitted to conciliation, the proceedings may be terminated only in accordance with the agreed conciliation procedure.

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

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

**Section 2**  
**Compulsory procedures entailing binding decisions**

**Article 286. Application of procedures under this section**

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

**Article 287. Choice of procedure**

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:
  - (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI<sup>1</sup>;
  - (b) the International Court of Justice;
  - (c) an arbitral tribunal constituted in accordance with Annex VII<sup>2</sup>;
  - (d) a special arbitral tribunal constituted in accordance with Annex VIII<sup>3</sup> for one or more of the categories of disputes specified therein.
2. A declaration made under paragraph 1 shall not affect or be affected by the obligation of a State Party to accept the jurisdiction of the Seabed Disputes Chamber of

<sup>1</sup>See: p. 420.

<sup>2</sup>See: p. 431.

<sup>3</sup>See: p. 435.

the International Tribunal for the Law of the Sea to the extent and in the manner provided for in Part XI, section 5.

3. A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII<sup>1</sup>.
4. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.
5. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII<sup>2</sup>, unless the parties otherwise agree.
6. A declaration made under paragraph 1 shall remain in force until three months after notice of revocation has been deposited with the Secretary-General of the United Nations.
7. A new declaration, a notice of revocation or the expiry of a declaration does not in any way affect proceedings pending before a court or tribunal having jurisdiction under this article, unless the parties otherwise agree.
8. Declarations and notices referred to in this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

#### **Article 288. Jurisdiction**

1. A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.
2. A court or tribunal referred to in article 287 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement.
3. The Seabed Disputes Chamber of the International Tribunal for the Law of the Sea established in accordance with Annex VI<sup>3</sup>, and any other chamber or arbitral tribunal referred to in Part XI, section 5, shall have jurisdiction in any matter which is submitted to it in accordance therewith.
4. In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.

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<sup>1</sup>See: p. 431.

<sup>2</sup>See: p. 431.

<sup>3</sup>See: p. 420.

### Article 289. Experts

In any dispute involving scientific or technical matters, a court or tribunal exercising jurisdiction under this section may, at the request of a party or *proprio motu*, select in consultation with the parties no fewer than two scientific or technical experts chosen preferably from the relevant list prepared in accordance with Annex VIII<sup>1</sup>, article 2, to sit with the court or tribunal but without the right to vote.

### Article 290. Provisional measures

1. If a dispute has been duly submitted to a court or tribunal which considers that *prima facie* it has jurisdiction under this Part or Part XI, section 5, the court or tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision.
2. Provisional measures may be modified or revoked as soon as the circumstances justifying them have changed or ceased to exist.
3. Provisional measures may be prescribed, modified or revoked under this article only at the request of a party to the dispute and after the parties have been given an opportunity to be heard.
4. The court or tribunal shall forthwith give notice to the parties to the dispute, and to such other States Parties as it considers appropriate, of the prescription, modification or revocation of provisional measures.
5. Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea or, with respect to activities in the Area, the Seabed Disputes Chamber, may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm those provisional measures, acting in conformity with paragraphs 1 to 4.
6. The parties to the dispute shall comply promptly with any provisional measures prescribed under this article.

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<sup>1</sup>See: p. 435.

**Article 291. Access**

1. All the dispute settlement procedures specified in this Part shall be open to States Parties.
2. The dispute settlement procedures specified in this Part shall be open to entities other than States Parties only as specifically provided for in this Convention.

**Article 292. Prompt release of vessels and crews**

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.
2. The application for release may be made only by or on behalf of the flag State of the vessel.
3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.
4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.

**Article 293. Applicable law**

1. A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.
2. Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case *ex aequo et bono*, if the parties so agree.

**Article 294. Preliminary proceedings**

1. A court or tribunal provided for in article 287 to which an application is made in respect of a dispute referred to in article 297 shall determine at the request of a party, or may determine *proprio motu*, whether the claim constitutes an abuse of legal process or whether *prima facie* it is well founded. If the court or tribunal

determines that the claim constitutes an abuse of legal process or is *prima facie* unfounded, it shall take no further action in the case.

2. Upon receipt of the application, the court or tribunal shall immediately notify the other party or parties of the application, and shall fix a reasonable time-limit within which they may request it to make a determination in accordance with paragraph 1.
3. Nothing in this article affects the right of any party to a dispute to make preliminary objections in accordance with the applicable rules of procedure.

#### **Article 295. Exhaustion of local remedies**

Any dispute between States Parties concerning the interpretation or application of this Convention may be submitted to the procedures provided for in this section only after local remedies have been exhausted where this is required by international law.

#### **Article 296. Finality and binding force of decisions**

1. Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute.
2. Any such decision shall have no binding force except between the parties and in respect of that particular dispute.

### **Section 3**

#### **Limitations and exceptions to applicability of section 2**

#### **Article 297. Limitations on applicability of section 2**

1. Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases:
  - (a) when it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;
  - (b) when it is alleged that a State in exercising the aforementioned freedoms, rights or uses has acted in contravention of this Convention or of laws or regulations adopted by the coastal State in conformity with this Convention and other rules of international law not incompatible with this Convention; or
  - (c) when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have



been established by this Convention or through a competent international organization or diplomatic conference in accordance with this Convention.

2. (a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute arising out of:
    - (i) the exercise by the coastal State of a right or discretion in accordance with article 246; or
    - (ii) a decision by the coastal State to order suspension or cessation of a research project in accordance with article 253.
  - (b) A dispute arising from an allegation by the researching State that with respect to a specific project the coastal State is not exercising its rights under articles 246 and 253 in a manner compatible with this Convention shall be submitted, at the request of either party, to conciliation under Annex V<sup>1</sup>, section 2, provided that the conciliation commission shall not call in question the exercise by the coastal State of its discretion to designate specific areas as referred to in article 246, paragraph 6, or of its discretion to withhold consent in accordance with article 246, paragraph 5.
3. (a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations.
  - (b) Where no settlement has been reached by recourse to section 1 of this Part, a dispute shall be submitted to conciliation under Annex V<sup>2</sup>, section 2, at the request of any party to the dispute, when it is alleged that:
    - (i) a coastal State has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not seriously endangered;
    - (ii) a coastal State has arbitrarily refused to determine, at the request of another State, the allowable catch and its capacity to harvest living resources with respect to stocks which that other State is interested in fishing; or

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<sup>1</sup>See: p. 417.

<sup>2</sup>See: p. 417.

- (iii) a coastal State has arbitrarily refused to allocate to any State, under articles 62, 69 and 70 and under the terms and conditions established by the coastal State consistent with this Convention, the whole or part of the surplus it has declared to exist.
- (c) In no case shall the conciliation commission substitute its discretion for that of the coastal State.
- (d) The report of the conciliation commission shall be communicated to the appropriate international organizations.
- (e) In negotiating agreements pursuant to articles 69 and 70, States Parties, unless they otherwise agree, shall include a clause on measures which they shall take in order to minimize the possibility of a disagreement concerning the interpretation or application of the agreement, and on how they should proceed if a disagreement nevertheless arises.

#### **Article 298. Optional exceptions to applicability of section 2**

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes:
  - (a) (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V<sup>1</sup>, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;
  - (ii) after the conciliation commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2, unless the parties otherwise agree;
  - (iii) this subparagraph does not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties;

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<sup>1</sup>See: p. 417.

- (b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3;
  - (c) disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by the means provided for in this Convention.
2. A State Party which has made a declaration under paragraph 1 may at any time withdraw it, or agree to submit a dispute excluded by such declaration to any procedure specified in this Convention.
  3. A State Party which has made a declaration under paragraph 1 shall not be entitled to submit any dispute falling within the excepted category of disputes to any procedure in this Convention as against another State Party, without the consent of that party.
  4. If one of the States Parties has made a declaration under paragraph 1(a), any other State Party may submit any dispute falling within an excepted category against the declarant party to the procedure specified in such declaration.
  5. A new declaration, or the withdrawal of a declaration, does not in any way affect proceedings pending before a court or tribunal in accordance with this article, unless the parties otherwise agree.
  6. Declarations and notices of withdrawal of declarations under this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

#### **Article 299. Right of the parties to agree upon a procedure**

1. A dispute excluded under article 297 or excepted by a declaration made under article 298 from the dispute settlement procedures provided for in section 2 may be submitted to such procedures only by agreement of the parties to the dispute.
2. Nothing in this section impairs the right of the parties to the dispute to agree to some other procedure for the settlement of such dispute or to reach an amicable settlement.

## **Part XVI**

### **General provisions**

#### **Article 300. Good faith and abuse of rights**

States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.

#### **Article 301. Peaceful uses of the seas**

In exercising their rights and performing their duties under this Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations.

#### **Article 302. Disclosure of information**

Without prejudice to the right of a State Party to resort to the procedures for the settlement of disputes provided for in this Convention, nothing in this Convention shall be deemed to require a State Party, in the fulfilment of its obligations under this Convention, to supply information the disclosure of which is contrary to the essential interests of its security.

#### **Article 303. Archaeological and historical objects found at sea**

1. States have the duty to protect objects of an archaeological and historical nature found at sea and shall cooperate for this purpose.
2. In order to control traffic in such objects, the coastal State may, in applying article 33, presume that their removal from the seabed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article.
3. Nothing in this article affects the rights of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges.
4. This article is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature.

#### **Article 304. Responsibility and liability for damage**

The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law.

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## Part XVII

### Final provisions

#### Article 305. Signature

1. This Convention shall be open for signature by:
  - (a) all States;
  - (b) Namibia, represented by the United Nations Council for Namibia;
  - (c) all self-governing associated States which have chosen that status in an act of self-determination supervised and approved by the United Nations in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
  - (d) all self-governing associated States which, in accordance with their respective instruments of association, have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
  - (e) all territories which enjoy full internal self-government, recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;
  - (f) international organizations, in accordance with Annex IX<sup>1</sup>.
2. This Convention shall remain open for signature until 9 December 1984 at the Ministry of Foreign Affairs of Jamaica and also, from 1 July 1983 until 9 December 1984, at United Nations Headquarters in New York.

#### Article 306. Ratification and formal confirmation

This Convention is subject to ratification by States and the other entities referred to in article 305, paragraph 1(b), (c), (d) and (e), and to formal confirmation, in accordance with Annex IX<sup>2</sup>, by the entities referred to in article 305, paragraph 1(f). The instruments of ratification and of formal confirmation shall be deposited with the Secretary-General of the United Nations.

#### Article 307. Accession

This Convention shall remain open for accession by States and the other entities referred to in article 305. Accession by the entities referred to in article 305, para-

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<sup>1</sup>See: p. 438.

<sup>2</sup>See: p. 438.

graph 1(f), shall be in accordance with Annex IX<sup>1</sup>. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

### **Article 308. Entry into force**

1. This Convention shall enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after the deposit of the sixtieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession, subject to paragraph 1.
3. The Assembly of the Authority shall meet on the date of entry into force of this Convention and shall elect the Council of the Authority. The first Council shall be constituted in a manner consistent with the purpose of article 161 if the provisions of that article cannot be strictly applied.
4. The rules, regulations and procedures drafted by the Preparatory Commission shall apply provisionally pending their formal adoption by the Authority in accordance with Part XI.
5. The Authority and its organs shall act in accordance with resolution II of the Third United Nations Conference on the Law of the Sea relating to preparatory investment and with decisions of the Preparatory Commission taken pursuant to that resolution.

### **Article 309. Reservations and exceptions**

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

### **Article 310. Declarations and statements**

Article 309 does not preclude a State, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State<sup>2</sup>.

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<sup>1</sup>See: p. 438.

<sup>2</sup>**Declaration of Spain**

Upon signature:

1. The Spanish Government, upon signing this Convention, declares that this act cannot be interpreted as recognition of any rights or situations relating to the maritime spaces of Gibraltar which are

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not included in article 10 of the Treaty of Utrecht of 13 July 1713 between the Spanish and British Crowns. The Spanish Government also considers that Resolution III of the Third United Nations Conference on the Law of the Sea is not applicable in the case of the Colony of Gibraltar, which is undergoing a decolonization process in which only the relevant resolutions adopted by the United Nations General Assembly apply.

2. It is the Spanish Government's interpretation that the régime established in Part III of the Convention is compatible with the right of the coastal State to issue and apply its own air regulations in the air space of the straits used for international navigation so long as this does not impede the transit passage of aircraft.
3. With regard to article 39, paragraph 3, it takes the word "normally" to mean "except in cases of force majeure or distress".
4. With regard to Article 42, it considers that the provisions of paragraph 1 (b) do not prevent it from issuing, in accordance with international law, laws and regulations giving effect to generally accepted international regulations.
5. The Spanish Government interprets articles 69 and 70 of the Convention as meaning that access to fishing in the economic zones of third States by the fleets of developed land-locked and geographically disadvantaged States is dependent upon the prior granting of access by the coastal States in question to the nationals of other States who have habitually fished in the economic zone concerned.
6. It interprets the provisions of Article 221 as not depriving the coastal State of a strait used for international navigation of its powers, recognized by international law, to intervene in the case of the casualties referred to in that article.
7. It considers that Article 233 must be interpreted, in any case, in conjunction with the provisions of Article 34.
8. It considers that, without prejudice to the provisions of Article 297 regarding the settlement of disputes, Articles 56, 61 and 62 of the Convention preclude considering as discretionary the powers of the coastal State to determine the allowable catch, its harvesting capacity and the allocation of surpluses to other States.
9. Its interpretation of Annex III, Article 9, is that the provisions thereof shall not obstruct participation, in the joint ventures referred to in paragraph 2, of the States Parties whose industrial potential precludes them from participating directly as contractors in the exploitation and resources of the Area.

Upon ratification:

1. The Kingdom of Spain recalls that, as a member of the European Union, it has transferred competence over certain matters governed by the Convention to the European Community. A detailed declaration will be made in due course as to the nature and extent of the competence transferred to the European Community, in accordance with the provisions of Annex IX of the Convention.
2. In ratifying the Convention, Spain wishes to make it known that this act cannot be construed as recognition of any rights or status regarding the maritime space of Gibraltar that are not included in article 10 of the Treaty of Utrecht of 13 July 1713 concluded between the Crowns of Spain and Great Britain. Furthermore, Spain does not consider that Resolution III of the Third United Nations Conference on the Law of the Sea is applicable to the colony of Gibraltar, which is subject to a process of decolonization in which only relevant resolutions adopted by the United Nations General Assembly are applicable.
3. Spain understands that:
  - a) The provisions laid down in Part III of the Convention are compatible with the right of a coastal State to dictate and apply its own regulations in straits used for international navigation, provided that this does not impede the right of transit passage.
  - (b) In article 39, paragraph 3(a), the word 'normally' means 'unless by force majeure or by distress'.

- (c) The provisions of article 221 shall not deprive a State bordering a strait used for international navigation of its competence under international law regarding intervention in the event of the casualties referred to in that article.
4. Spain interprets that:
- a) Articles 69 and 70 of the Convention mean that access to fisheries in the exclusive economic zone of third States by the fleets of developed landlocked or geographically disadvantaged States shall depend on whether the relevant coastal States have previously granted access to the fleets of States which habitually fish in the relevant exclusive economic zone.
  - b) With regard to article 297, and without prejudice to the provisions of that article in respect of settlement of disputes, articles 56, 61 and 62 of the Convention do not allow of an interpretation whereby the rights of the coastal State to determine permissible catches, its capacity for exploitation and the allocation of surpluses to other States may be considered discretionary.
5. The provisions of article 9 of Annex III shall not prevent States Parties whose industrial potential does not enable them to participate directly as contractors in the exploitation of the resources of the zone from participating in the joint ventures referred to in paragraph 2 of that article.
6. In accordance with the provisions of article 287, paragraph 1, Spain chooses the International Court of Justice as the means for the settlement of disputes concerning the interpretation or application of the Convention.

#### **Declaration of Argentina**

Upon signature:

The signing of the Convention by the Argentine Government does not imply acceptance of the Final Act of the Third United Nations Conference on the Law of the Sea. In that regard, the Argentine Republic, as in its written statement of 8 December 1982 (A/CONF.62/WS/35), places on record its reservation to the effect that resolution III, in annex I to the final Act, in no way affects the “Question of the Falkland Islands (Malvinas)”, which is governed by the following specific resolutions of the General Assembly: 2065 (XX), 3160 (XXVIII), 31/49, 37/9 and 38/12, adopted within the framework of the decolonization process.

In this connection, and bearing in mind that the Malvinas and the South Sandwich and South Georgia Islands form an integral part of Argentine territory, the Argentine Government declares that it neither recognizes nor will it recognize the title of any other State, community or entity or the exercise by it of any right of maritime jurisdiction which is claimed to be protected under any interpretation of resolution III that violates the rights of Argentina over the Malvinas and the South Sandwich and South Georgia Islands and their respective maritime zones. Consequently, it likewise neither recognizes nor will recognize and will consider null and void any activity or measure that may be carried out or adopted without its consent with regard to this question, which the Argentine Government considers to be of major importance.

The Argentine Government will accordingly interpret the occurrence of acts of the kind referred to above as contrary to the aforementioned resolutions adopted by the United Nations, the patent objective of which is the peaceful settlement of the sovereignty dispute concerning the islands by means of bilateral negotiations and through the good offices of the Secretary-General of the United Nations.

Furthermore, it is the understanding of the Argentine Republic that, whereas the Final Act states in paragraph 42 that the Convention “together with resolutions I to IV, [forms] an integral whole”, it is merely describing the procedure that was followed at the Conference to avoid a series of separate votes on the Convention and the resolutions. The Convention itself clearly establishes in article 318 that only the Annexes form an integral part of the Convention; thus, any other instrument or document, even one adopted by the Conference, does not form an integral part of the United Nations Convention on the Law of the Sea.

Upon ratification:

- a) With regard to those provisions of the Convention which deal with innocent passage through the territorial sea, it is the intention of the Government of the Argentine Republic to continue to apply



the regime currently in force to the passage of foreign warships through the Argentine territorial sea, since that regime is totally compatible with the provisions of the Convention.

- b) With regard to Part III of the Convention, the Argentine Government declares that in the Treaty of Peace and Friendship signed with the Republic of Chile on 29 November 1984, which entered into force on 2 May 1985 and was registered with the United Nations Secretariat in accordance with Article 102 of the Charter of the United Nations, both States reaffirmed the validity of article V of the Boundary Treaty of 1881 whereby the Strait of Magellan (Estrecho de Magallanes) is neutralized forever with free navigation assured for the flags of all nations. The aforementioned Treaty of Peace and Friendship includes regulations for vessels flying the flags of third countries in the Beagle Channel and other straits and channels of the Tierra del Fuego archipelago.
- c) The Argentine Republic accepts the provisions on the conservation and management of the living resources of the high seas, but considers that they are insufficient, particularly the provisions relating to straddling fish stocks or highly migratory fish stocks, and that they should be supplemented by an effective and binding multilateral regime which, inter alia, would facilitate cooperation to prevent and avoid over-fishing, and would permit the monitoring of the activities of fishing vessels on the high seas and of the use of fishing methods and gear.

The Argentine Government, bearing in mind its priority interest in conserving the resources of its exclusive economic zone and the area of the high seas adjacent thereto, considers that, in accordance with the provisions of the Convention, where the same stock or stocks of associated species occur both within the exclusive economic zone and in the area of the high seas adjacent thereto, the Argentine Republic, as the coastal State, and other States fishing for such stocks in the area adjacent to its exclusive economic zone should agree upon the measures necessary for the conservation of those stocks or stocks of associated species in the high seas.

Independently of this, it is the understanding of the Argentine Government, that in order to comply with the obligation laid down in the Convention concerning the conservation of the living resources in its exclusive economic zone and the area adjacent thereto, it is authorized to adopt, in accordance with international law, all the measures it may deem necessary for the purpose.

- d) The ratification of the Convention by the Argentine Republic does not imply acceptance of the Final Act of the Third United Nations Conference on the Law of the Sea. In that regard, the Argentine Republic, as in its written statement of 8 December 1982 (A/CONF.62/WS/35), places on record its reservation to the effect that resolution III, in annex I to the Final Act, in no way affects the “Question of the Falkland Islands (Malvinas)”, which is governed by the following specific resolutions of the General Assembly: 2065 (XX), 3160 (XXVIII), 31/49, 37/9, 38/12, 39/6, 40/21, 41/40, 42/19, 43/25, 44/406, 45/424, 46/406, 47/408 and 48/408, adopted within the framework of the decolonization process. [See: paragraphs 2, 3 and 4 of the declaration made upon signature above.]

The Argentine Republic reaffirms its legitimate and inalienable sovereignty over the Malvinas and the South Sandwich Islands and their respective maritime and island zones, which form an integral part of its national territory. The recovery of those territories and the full exercise of sovereignty, respecting the way of life of the inhabitants of the territories and in accordance with the principles of international law, constitute a permanent objective of the Argentine people that cannot be renounced.

Furthermore, it is the understanding of the Argentine Republic that the Final Act, in referring in paragraph 42 to the Convention together with resolutions I to IV as forming an integral whole, is merely describing the procedure that was followed at the Conference to avoid a series of separate votes on the Convention and the resolutions. The Convention itself clearly establishes in article 318 that only the Annexes form an integral part of the Convention; thus, any other instrument or document, even one adopted by the Conference, does not form an integral part of the United Nations Convention on the Law of the Sea.

- e) The Argentine Republic fully respects the right of free navigation as embodied in the Convention, however, it considers that the transit by sea of vessels carrying highly radioactive substances must be duly regulated.

The Argentine Government accepts the provisions on prevention of pollution of the marine environment contained in Part XII of the Convention, but considers that, in the light of events subsequent

to the adoption of that international instrument, the measures to prevent, control and minimize the effects of the pollution of the sea by noxious and potentially dangerous substances and highly active radioactive substances must be supplemented and reinforced.

- f) In accordance with the provisions of article 287, the Argentine Government declares that it accepts, in order of preference, the following means for the settlement of disputes concerning the interpretation or application of the Convention: (a) the International Tribunal for the Law of the Sea; (b) an arbitral tribunal constituted in accordance with Annex VIII for questions relating to fisheries, protection and preservation of the marine environment, marine scientific research, and navigation, in accordance with Annex VIII, article 1.

### **Declarations of United Kingdom of Great Britain and Northern Ireland**

#### a) General

The United Kingdom cannot accept any declaration or statement made or to be made in the future which is not in conformity with articles 309 and 310 of the Convention. Article 309 of the Convention prohibits reservations and exceptions (except those expressly permitted by other articles of the Convention). Under article 310 declarations and statements made by a State cannot exclude or modify the legal effect of the provisions of the Convention in their application to the State concerned.

The United Kingdom considers that declarations and statements not in conformity with articles 309 and 310 include, *inter alia*, the following:

- Those which relate to baselines not drawn in conformity with the Convention;
- Those which purport to require any form of notification or permission before warships or other ships exercise the right of innocent passage or freedom of navigation or which otherwise purport to limit navigational rights in ways not permitted by the Convention;
- Those which are incompatible with the provisions of the Convention relating to straits used for international navigation, including the right of transit passage;
- Those which are incompatible with the provisions of the Convention relating to archipelagic states or waters, including archipelagic baselines and archipelagic sea lanes passage;
- Those which are not in conformity with the provisions of the Convention relating to the exclusive economic zone or the continental shelf, including those which claim coastal state jurisdiction over all installations and structures in the exclusive economic zone or on the continental shelf, and those which purport to require consent for exercises or manoeuvres (including weapons exercises) in those areas;
- Those which purport to subordinate the interpretation or application of the Convention to national laws and regulations, including constitutional provisions.

#### b) European Community

The United Kingdom recalls that, as a Member of the European Community, it has transferred competence to the Community in respect of certain matters governed by the Convention. A detailed declaration on the nature and extent of the competence to the European Community will be made in due course in accordance with the provisions of Annex IX of the Convention.

#### c) The Falkland Islands

With regard to paragraph (d) of the Declaration made upon ratification of the Convention by the Government of the Argentine Republic, the Government of the United Kingdom has no doubt about the sovereignty of the United Kingdom over the Falkland Islands and over South Georgia and the South Sandwich Islands. The Government of the United Kingdom, as the administering authority of both Territories, has extended the United Kingdom's accession to the Falkland Islands and to South Georgia and the South Sandwich Islands. The Government of the United Kingdom, therefore, rejects as unfounded paragraph (d) of the Argentine declaration.

#### d) Gibraltar

With regard to point 2 of the declaration made upon ratification of the convention by the Government of Spain, the Government of the United Kingdom has no doubt about the sovereignty of the United

**Article 311. Relation to other conventions and international agreements**

1. This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958.
2. This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.
3. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Convention, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.
4. States Parties intending to conclude an agreement referred to in paragraph 3 shall notify the other States Parties through the depositary of this Convention of their intention to conclude the agreement and of the modification or suspension for which it provides.
5. This article does not affect international agreements expressly permitted or preserved by other articles of this Convention.
6. States Parties agree that there shall be no amendments to the basic principle relating to the common heritage of mankind set forth in article 136 and that they shall not be party to any agreement in derogation thereof.

**Article 312. Amendment**

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

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Kingdom over Gibraltar, including its territorial waters. The Government of the United Kingdom, as the administering authority of Gibraltar, has extended the United Kingdom's accession to the Convention and ratification of the Agreement to Gibraltar. The Government of the United Kingdom, therefore, rejects as unfounded point 2 of the Spanish declaration.

Parties reply favourably to the request, the Secretary-General shall convene the conference.

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

### **Article 313. Amendment by simplified procedure**

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose an amendment to this Convention, other than an amendment relating to activities in the Area, to be adopted by the simplified procedure set forth in this article without convening a conference. The Secretary-General shall circulate the communication to all States Parties.
2. If, within a period of 12 months from the date of the circulation of the communication, a State Party objects to the proposed amendment or to the proposal for its adoption by the simplified procedure, the amendment shall be considered rejected. The Secretary-General shall immediately notify all States Parties accordingly.
3. If, 12 months from the date of the circulation of the communication, no State Party has objected to the proposed amendment or to the proposal for its adoption by the simplified procedure, the proposed amendment shall be considered adopted. The Secretary-General shall notify all States Parties that the proposed amendment has been adopted.

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

1. A State Party may, by written communication addressed to the Secretary-General of the Authority, propose an amendment to the provisions of this Convention relating exclusively to activities in the Area, including Annex VI<sup>1</sup>, section 4. The Secretary-General shall circulate such communication to all States Parties. The proposed amendment shall be subject to approval by the Assembly following its approval by the Council. Representatives of States Parties in those organs shall have full powers to consider and approve the proposed amendment. The proposed amendment as approved by the Council and the Assembly shall be considered adopted.
2. Before approving any amendment under paragraph 1, the Council and the Assembly shall ensure that it does not prejudice the system of exploration for and exploitation of the resources of the Area, pending the Review Conference in accordance with article 155.

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<sup>1</sup>See: p. 420.

**Article 315. Signature, ratification of, accession to and authentic texts of amendments**

1. Once adopted, amendments to this Convention shall be open for signature by States Parties for 12 months from the date of adoption, at United Nations Headquarters in New York, unless otherwise provided in the amendment itself.
2. Articles 306, 307 and 320 apply to all amendments to this Convention.

**Article 316. Entry into force of amendments**

1. Amendments to this Convention, other than those referred to in paragraph 5, shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties or by 60 States Parties, whichever is greater. Such amendments shall not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.
2. An amendment may provide that a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.
3. For each State Party ratifying or acceding to an amendment referred to in paragraph 1 after the deposit of the required number of instruments of ratification or accession, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.
4. A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 1 shall, failing an expression of a different intention by that State:
  - (a) be considered as a Party to this Convention as so amended; and
  - (b) be considered as a Party to the unamended Convention in relation to any State Party not bound by the amendment.
5. Any amendment relating exclusively to activities in the Area and any amendment to Annex VI<sup>1</sup> shall enter into force for all States Parties one year following the deposit of instruments of ratification or accession by three fourths of the States Parties.
6. A State which becomes a Party to this Convention after the entry into force of amendments in accordance with paragraph 5 shall be considered as a Party to this Convention as so amended.

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<sup>1</sup>See: p. 420.

**Article 317. Denunciation**

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Convention and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
2. A State shall not be discharged by reason of the denunciation from the financial and contractual obligations which accrued while it was a Party to this Convention, nor shall the denunciation affect any right, obligation or legal situation of that State created through the execution of this Convention prior to its termination for that State.
3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

**Article 318. Status of Annexes**

The Annexes form an integral part of this Convention and, unless expressly provided otherwise, a reference to this Convention or to one of its Parts includes a reference to the Annexes relating thereto.

**Article 319. Depositary**

1. The Secretary-General of the United Nations shall be the depositary of this Convention and amendments thereto.
2. In addition to his functions as depositary, the Secretary-General shall:
  - (a) report to all States Parties, the Authority and competent international organizations on issues of a general nature that have arisen with respect to this Convention;
  - (b) notify the Authority of ratifications and formal confirmations of and accessions to this Convention and amendments thereto, as well as of denunciations of this Convention;
  - (c) notify States Parties of agreements in accordance with article 311, paragraph 4;
  - (d) circulate amendments adopted in accordance with this Convention to States Parties for ratification or accession;
  - (e) convene necessary meetings of States Parties in accordance with this Convention.
3. (a) The Secretary-General shall also transmit to the observers referred to in article 156:

- (i) reports referred to in paragraph 2(a);
  - (ii) notifications referred to in paragraph 2(b) and (c); and
  - (iii) texts of amendments referred to in paragraph 2(d), for their information.
- (b) The Secretary-General shall also invite those observers to participate as observers at meetings of States Parties referred to in paragraph 2(e).

**Article 320. Authentic texts**

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

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

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

## Annex I

### Highly migratory species

1. Albacore tuna: *Thunnus alalunga*.
2. Bluefin tuna: *Thunnus thynnus*.
3. Bigeye tuna: *Thunnus obesus*.
4. Skipjack tuna: *Katsuwonus pelamis*.
5. Yellowfin tuna: *Thunnus albacares*.
6. Blackfin tuna: *Thunnus atlanticus*.
7. Little tuna: *Euthynnus alletteratus*; *Euthynnus affinis*.
8. Southern bluefin tuna: *Thunnus maccoyii*.
9. Frigate mackerel: *Auxis thazard*; *Auxis rochei*.
10. Pomfrets: Family *Bramidae*.
11. Marlins: *Tetrapturus angustirostris*; *Tetrapturus belone*; *Tetrapturus pfluegeri*; *Tetrapturus albidus*; *Tetrapturus audax*; *Tetrapturus georgei*; *Makaira mazara*; *Makaira indica*; *Makaira nigricans*.
12. Sail-fishes: *Istiophorus platypterus*; *Istiophorus albicans*.
13. Swordfish: *Xiphias gladius*.
14. Sauries: *Scomberesox saurus*; *Cololabis saira*; *Cololabis adocetus*; *Scomberesox saurus scombroides*.
15. Dolphin: *Coryphaena hippurus*; *Coryphaena equiselis*.
16. Oceanic sharks: *Hexanchus griseus*; *Cetorhinus maximus*; Family *Alopiidae*; *Rhincodon typus*; Family *Carcharhinidae*; Family *Sphyrnidae*; Family *Isurida*.
17. Cetaceans: Family *Physeteridae*; Family *Balaenopteridae*; Family *Balaenidae*; Family *Eschrichtiidae*; Family *Monodontidae*; Family *Ziphiidae*; Family *Delphinidae*.



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## **Annex II**

### **Commission on the Limits of the Continental Shelf**

#### **Article 1**

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

#### **Article 2**

1. The Commission shall consist of 21 members who shall be experts in the field of geology, geophysics or hydrography, elected by States Parties to this Convention from among their nationals, having due regard to the need to ensure equitable geographical representation, who shall serve in their personal capacities.
2. The initial election shall be held as soon as possible but in any case within 18 months after the date of entry into force of this Convention. At least three months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties, inviting the submission of nominations, after appropriate regional consultations, within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated and shall submit it to all the States Parties.
3. Elections of the members of the Commission shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Commission shall be those nominees who obtain a two-thirds majority of the votes of the representatives of States Parties present and voting. Not less than three members shall be elected from each geographical region.
4. The members of the Commission shall be elected for a term of five years. They shall be eligible for re-election.
5. The State Party which submitted the nomination of a member of the Commission shall defray the expenses of that member while in performance of Commission duties. The coastal State concerned shall defray the expenses incurred in respect of the advice referred to in article 3, paragraph 1(b), of this Annex. The secretariat of the Commission shall be provided by the Secretary-General of the United Nations.

#### **Article 3**

1. The functions of the Commission shall be:
  - (a) to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend

beyond 200 nautical miles, and to make recommendations in accordance with article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea;

- (b) to provide scientific and technical advice, if requested by the coastal State concerned during the preparation of the data referred to in subparagraph (a).
2. The Commission may cooperate, to the extent considered necessary and useful, with the Intergovernmental Oceanographic Commission of UNESCO, the International Hydrographic Organization and other competent international organizations with a view to exchanging scientific and technical information which might be of assistance in discharging the Commission's responsibilities.

#### **Article 4**

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

#### **Article 5**

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

#### **Article 6**

1. The sub-commission shall submit its recommendations to the Commission.
2. Approval by the Commission of the recommendations of the sub-commission shall be by a majority of two thirds of Commission members present and voting.
3. The recommendations of the Commission shall be submitted in writing to the coastal State which made the submission and to the Secretary-General of the United Nations.

**Article 7**

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

**Article 8**

In the case of disagreement by the coastal State with the recommendations of the Commission, the coastal State shall, within a reasonable time, make a revised or new submission to the Commission.

**Article 9**

The actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts.

## **Annex III**

### **Basic conditions of prospecting, exploration and exploitation**

#### **Article 1. Title to minerals**

Title to minerals shall pass upon recovery in accordance with this Convention.

#### **Article 2. Prospecting**

1. (a) The Authority shall encourage prospecting in the Area.  
(b) Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector will comply with this Convention and the relevant rules, regulations and procedures of the Authority concerning cooperation in the training programmes referred to in articles 143 and 144 and the protection of the marine environment, and will accept verification by the Authority of compliance therewith. The proposed prospector shall, at the same time, notify the Authority of the approximate area or areas in which prospecting is to be conducted.  
(c) Prospecting may be conducted simultaneously by more than one prospector in the same area or areas.
2. Prospecting shall not confer on the prospector any rights with respect to resources. A prospector may, however, recover a reasonable quantity of minerals to be used for testing.

#### **Article 3. Exploration and exploitation**

1. The Enterprise, States Parties, and the other entities referred to in article 153, paragraph 2(b), may apply to the Authority for approval of plans of work for activities in the Area.
2. The Enterprise may apply with respect to any part of the Area, but applications by others with respect to reserved areas are subject to the additional requirements of article 9 of this Annex.
3. Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in article 153, paragraph 3, and approved by the Authority in accordance with this Convention and the relevant rules, regulations and procedures of the Authority.
4. Every approved plan of work shall:
  - (a) be in conformity with this Convention and the rules, regulations and procedures of the Authority;

- (b) provide for control by the Authority of activities in the Area in accordance with article 153, paragraph 4;
  - (c) confer on the operator, in accordance with the rules, regulations and procedures of the Authority, the exclusive right to explore for and exploit the specified categories of resources in the area covered by the plan of work. If, however, the applicant presents for approval a plan of work covering only the stage of exploration or the stage of exploitation, the approved plan of work shall confer such exclusive right with respect to that stage only.
5. Upon its approval by the Authority, every plan of work, except those presented by the Enterprise, shall be in the form of a contract concluded between the Authority and the applicant or applicants.

#### **Article 4. Qualifications of applicants**

1. Applicants, other than the Enterprise, shall be qualified if they have the nationality or control and sponsorship required by article 153, paragraph 2(b), and if they follow the procedures and meet the qualification standards set forth in the rules, regulations and procedures of the Authority.
2. Except as provided in paragraph 6, such qualification standards shall relate to the financial and technical capabilities of the applicant and his performance under any previous contracts with the Authority.
3. Each applicant shall be sponsored by the State Party of which it is a national unless the applicant has more than one nationality, as in the case of a partnership or consortium of entities from several States, in which event all States Parties involved shall sponsor the application, or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application. The criteria and procedures for implementation of the sponsorship requirements shall be set forth in the rules, regulations and procedures of the Authority.
4. The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with the terms of its contract and its obligations under this Convention. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.
5. The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.

6. The qualification standards shall require that every applicant, without exception, shall as part of his application undertake:
  - (a) to accept as enforceable and comply with the applicable obligations created by the provisions of Part XI, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and terms of his contracts with the Authority;
  - (b) to accept control by the Authority of activities in the Area, as authorized by this Convention;
  - (c) to provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;
  - (d) to comply with the provisions on the transfer of technology set forth in article 5 of this Annex.

#### **Article 5. Transfer of technology**

1. When submitting a plan of work, every applicant shall make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, and other relevant non-proprietary information about the characteristics of such technology and information as to where such technology is available.
2. Every operator shall inform the Authority of revisions in the description and information made available pursuant to paragraph 1 whenever a substantial technological change or innovation is introduced.
3. Every contract for carrying out activities in the Area shall contain the following undertakings by the contractor:
  - (a) to make available to the Enterprise on fair and reasonable commercial terms and conditions, whenever the Authority so requests, the technology which he uses in carrying out activities in the Area under the contract, which the contractor is legally entitled to transfer. This shall be done by means of licences or other appropriate arrangements which the contractor shall negotiate with the Enterprise and which shall be set forth in a specific agreement supplementary to the contract. This undertaking may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions;
  - (b) to obtain a written assurance from the owner of any technology used in carrying out activities in the Area under the contract, which is not generally available on the open market and which is not covered by subparagraph (a), that the owner will, whenever the Authority so requests, make that technology available to the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, to the same extent as

made available to the contractor. If this assurance is not obtained, the technology in question shall not be used by the contractor in carrying out activities in the Area;

- (c) to acquire from the owner by means of an enforceable contract, upon the request of the Enterprise and if it is possible to do so without substantial cost to the contractor, the legal right to transfer to the Enterprise any technology used by the contractor, in carrying out activities in the Area under the contract, which the contractor is otherwise not legally entitled to transfer and which is not generally available on the open market. In cases where there is a substantial corporate relationship between the contractor and the owner of the technology, the closeness of this relationship and the degree of control or influence shall be relevant to the determination whether all feasible measures have been taken to acquire such a right. In cases where the contractor exercises effective control over the owner, failure to acquire from the owner the legal right shall be considered relevant to the contractor's qualification for any subsequent application for approval of a plan of work;
  - (d) to facilitate, upon the request of the Enterprise, the acquisition by the Enterprise of any technology covered by subparagraph (b), under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, if the Enterprise decides to negotiate directly with the owner of the technology;
  - (e) to take the same measures as are prescribed in subparagraphs (a), (b), (c) and (d) for the benefit of a developing State or group of developing States which has applied for a contract under article 9 of this Annex, provided that these measures shall be limited to the exploitation of the part of the area proposed by the contractor which has been reserved pursuant to article 8 of this Annex and provided that activities under the contract sought by the developing State or group of developing States would not involve transfer of technology to a third State or the nationals of a third State. The obligation under this provision shall only apply with respect to any given contractor where technology has not been requested by the Enterprise or transferred by that contractor to the Enterprise.
4. Disputes concerning undertakings required by paragraph 3, like other provisions of the contracts, shall be subject to compulsory settlement in accordance with Part XI and, in cases of violation of these undertakings, suspension or termination of the contract or monetary penalties may be ordered in accordance with article 18 of this Annex. Disputes as to whether offers made by the contractor are within the range of fair and reasonable commercial terms and conditions may be submitted by either party to binding commercial arbitration in accordance with the UNCITRAL Arbitration Rules or such other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority. If the finding is that the offer made by

the contractor is not within the range of fair and reasonable commercial terms and conditions, the contractor shall be given 45 days to revise his offer to bring it within that range before the Authority takes any action in accordance with article 18 of this Annex.

5. If the Enterprise is unable to obtain on fair and reasonable commercial terms and conditions appropriate technology to enable it to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology. This group shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions. Each such State Party shall take all feasible measures to this end within its own legal system.
6. In the case of joint ventures with the Enterprise, transfer of technology will be in accordance with the terms of the joint venture agreement.
7. The undertakings required by paragraph 3 shall be included in each contract for the carrying out of activities in the Area until 10 years after the commencement of commercial production by the Enterprise, and may be invoked during that period.
8. For the purposes of this article, “technology” means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose on a non-exclusive basis.

#### **Article 6 Approval of plans of work**

1. Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration proposed plans of work.
2. When considering an application for approval of a plan of work in the form of a contract, the Authority shall first ascertain whether:
  - (a) the applicant has complied with the procedures established for applications in accordance with article 4 of this Annex and has given the Authority the undertakings and assurances required by that article. In cases of non-compliance with these procedures or in the absence of any of these undertakings and assurances, the applicant shall be given 45 days to remedy these defects;
  - (b) the applicant possesses the requisite qualifications provided for in article 4 of this Annex.



3. All proposed plans of work shall be taken up in the order in which they are received. The proposed plans of work shall comply with and be governed by the relevant provisions of this Convention and the rules, regulations and procedures of the Authority, including those on operational requirements, financial contributions and the undertakings concerning the transfer of technology. If the proposed plans of work conform to these requirements, the Authority shall approve them provided that they are in accordance with the uniform and non-discriminatory requirements set forth in the rules, regulations and procedures of the Authority, unless:
  - (a) part or all of the area covered by the proposed plan of work is included in an approved plan of work or a previously submitted proposed plan of work which has not yet been finally acted on by the Authority;
  - (b) part or all of the area covered by the proposed plan of work is disapproved by the Authority pursuant to article 162, paragraph 2(x); or
  - (c) the proposed plan of work has been submitted or sponsored by a State Party which already holds:
    - (i) plans of work for exploration and exploitation of polymetallic nodules in non-reserved areas that, together with either part of the area covered by the application for a plan of work, exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of either part of the area covered by the proposed plan of work;
    - (ii) plans of work for the exploration and exploitation of polymetallic nodules in non-reserved areas which, taken together, constitute 2 per cent of the total seabed area which is not reserved or disapproved for exploitation pursuant to article 162, paragraph (2)(x).
4. For the purpose of the standard set forth in paragraph 3(c), a plan of work submitted by a partnership or consortium shall be counted on a *pro rata* basis among the sponsoring States Parties involved in accordance with article 4, paragraph 3, of this Annex. The Authority may approve plans of work covered by paragraph 3(c) if it determines that such approval would not permit a State Party or entities sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.
5. Notwithstanding paragraph 3(a), after the end of the interim period specified in article 151, paragraph 3, the Authority may adopt by means of rules, regulations and procedures other procedures and criteria consistent with this Convention for deciding which applicants shall have plans of work approved in cases of selection among applicants for a proposed area. These procedures and criteria shall ensure approval of plans of work on an equitable and non-discriminatory basis.

**Article 7. Selection among applicants for production authorizations**

1. Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration applications for production authorizations submitted during the immediately preceding period. The Authority shall issue the authorizations applied for if all such applications can be approved without exceeding the production limitation or contravening the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided in article 151.
2. When a selection must be made among applicants for production authorizations because of the production limitation set forth in article 151, paragraphs 2 to 7, or because of the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided for in article 151, paragraph 1, the Authority shall make the selection on the basis of objective and non-discriminatory standards set forth in its rules, regulations and procedures.
3. In the application of paragraph 2, the Authority shall give priority to those applicants which:
  - (a) give better assurance of performance, taking into account their financial and technical qualifications and their performance, if any, under previously approved plans of work;
  - (b) provide earlier prospective financial benefits to the Authority, taking into account when commercial production is scheduled to begin;
  - (c) have already invested the most resources and effort in prospecting or exploration.
4. Applicants which are not selected in any period shall have priority in subsequent periods until they receive a production authorization.
5. Selection shall be made taking into account the need to enhance opportunities for all States Parties, irrespective of their social and economic systems or geographical locations so as to avoid discrimination against any State or system, to participate in activities in the Area and to prevent monopolization of those activities.
6. Whenever fewer reserved areas than non-reserved areas are under exploitation, applications for production authorizations with respect to reserved areas shall have priority.
7. The decisions referred to in this article shall be taken as soon as possible after the close of each period.

### **Article 8. Reservation of areas**

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

### **Article 9. Activities in reserved areas**

1. The Enterprise shall be given an opportunity to decide whether it intends to carry out activities in each reserved area. This decision may be taken at any time, unless a notification pursuant to paragraph 4 is received by the Authority, in which event the Enterprise shall take its decision within a reasonable time. The Enterprise may decide to exploit such areas in joint ventures with the interested State or entity.
2. The Enterprise may conclude contracts for the execution of part of its activities in accordance with Annex IV<sup>1</sup>, article 12. It may also enter into joint ventures for the conduct of such activities with any entities which are eligible to carry out activities in the Area pursuant to article 153, paragraph 2(b). When considering such joint ventures, the Enterprise shall offer to States Parties which are developing States and their nationals the opportunity of effective participation.
3. The Authority may prescribe, in its rules, regulations and procedures, substantive and procedural requirements and conditions with respect to such contracts and joint ventures.
4. Any State Party which is a developing State or any natural or juridical person sponsored by it and effectively controlled by it or by other developing State which is a qualified applicant, or any group of the foregoing, may notify the Authority that it wishes to submit a plan of work pursuant to article 6 of this Annex with respect to a reserved area. The plan of work shall be considered if the Enterprise decides, pursuant to paragraph 1, that it does not intend to carry out activities in that area.

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<sup>1</sup>See p. 408.

**Article 10. Preference and priority among applicants**

An operator who has an approved plan of work for exploration only, as provided in article 3, paragraph 4(c), of this Annex shall have a preference and a priority among applicants for a plan of work covering exploitation of the same area and resources. However, such preference or priority may be withdrawn if the operator's performance has not been satisfactory.

**Article 11. Joint arrangements**

1. Contracts may provide for joint arrangements between the contractor and the Authority through the Enterprise, in the form of joint ventures or production sharing, as well as any other form of joint arrangement, which shall have the same protection against revision, suspension or termination as contracts with the Authority.
2. Contractors entering into such joint arrangements with the Enterprise may receive financial incentives as provided for in article 13 of this Annex.
3. Partners in joint ventures with the Enterprise shall be liable for the payments required by article 13 of this Annex to the extent of their share in the joint ventures, subject to financial incentives as provided for in that article.

**Article 12. Activities carried out by the Enterprise**

1. Activities in the Area carried out by the Enterprise pursuant to article 153, paragraph 2(a), shall be governed by Part XI, the rules, regulations and procedures of the Authority and its relevant decisions.
2. Any plan of work submitted by the Enterprise shall be accompanied by evidence supporting its financial and technical capabilities.

**Article 13. Financial terms of contracts**

1. In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the entities referred to in article 153, paragraph 2(b), and in negotiating those financial terms in accordance with Part XI and those rules, regulations and procedures, the Authority shall be guided by the following objectives:
  - (a) to ensure optimum revenues for the Authority from the proceeds of commercial production;
  - (b) to attract investments and technology to the exploration and exploitation of the Area;
  - (c) to ensure equality of financial treatment and comparable financial obligations for contractors;

- (d) to provide incentives on a uniform and non-discriminatory basis for contractors to undertake joint arrangements with the Enterprise and developing States or their nationals, to stimulate the transfer of technology thereto, and to train the personnel of the Authority and of developing States;
  - (e) to enable the Enterprise to engage in seabed mining effectively at the same time as the entities referred to in article 153, paragraph 2(b); and
  - (f) to ensure that, as a result of the financial incentives provided to contractors under paragraph 14, under the terms of contracts reviewed in accordance with article 19 of this Annex or under the provisions of article 11 of this Annex with respect to joint ventures, contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.
2. A fee shall be levied for the administrative cost of processing an application for approval of a plan of work in the form of a contract and shall be fixed at an amount of \$US 500,000 per application. The amount of the fee shall be reviewed from time to time by the Council in order to ensure that it covers the administrative cost incurred. If such administrative cost incurred by the Authority in processing an application is less than the fixed amount, the Authority shall refund the difference to the applicant.
3. A contractor shall pay an annual fixed fee of \$US 1 million from the date of entry into force of the contract. If the approved date of commencement of commercial production is postponed because of a delay in issuing the production authorization, in accordance with article 151, the annual fixed fee shall be waived for the period of postponement. From the date of commencement of commercial production, the contractor shall pay either the production charge or the annual fixed fee, whichever is greater.
4. Within a year of the date of commencement of commercial production, in conformity with paragraph 3, a contractor shall choose to make his financial contribution to the Authority by either:
- (a) paying a production charge only; or
  - (b) paying a combination of a production charge and a share of net proceeds.
5. (a) If a contractor chooses to make his financial contribution to the Authority by paying a production charge only, it shall be fixed at a percentage of the market value of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract. This percentage shall be fixed as follows:
- |   |             |
|---|-------------|
| (i) years 1-10 of commercial production           | 5 per cent  |
| (ii) years 11 to the end of commercial production | 12 per cent |

- (b) The said market value shall be the product of the quantity of the processed metals produced from the polymetallic nodules extracted from the area covered by the contract and the average price for those metals during the relevant accounting year, as defined in paragraphs 7 and 8.
6. If a contractor chooses to make his financial contribution to the Authority by paying a combination of a production charge and a share of net proceeds, such payments shall be determined as follows:
- (a) The production charge shall be fixed at a percentage of the market value, determined in accordance with subpara-graph (b), of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract. This percentage shall be fixed as follows:
- |   |            |
|---|------------|
| (i) first period of commercial production   | 2 per cent |
| (ii) second period of commercial production | 4 per cent |
- If, in the second period of commercial production, as defined in subpara-graph (d), the return on investment in any accounting year as defined in sub-paragraph (m) falls below 15 per cent as a result of the payment of the production charge at 4 per cent, the production charge shall be 2 per cent instead of 4 per cent in that accounting year.
- (b) The said market value shall be the product of the quantity of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract and the average price for those metals during the relevant accounting year as defined in paragraphs 7 and 8.
- (c) (i) The Authority's share of net proceeds shall be taken out of that portion of the contractor's net proceeds which is attributable to the mining of the resources of the area covered by the contract, referred to hereinafter as attributable net proceeds.
- (ii) The Authority's share of attributable net proceeds shall be determined in accordance with the following incremental schedule:

<i>Portion of attributable net proceeds</i>	<i>Share of the Authority</i>	
	<i>First period of commercial production</i>	<i>Second period of commercial production</i>
That portion representing a return on investment which is greater than 0 per cent, but less than 10 per cent	35 per cent	40 per cent
That portion representing a return on investment which is 10 per cent or greater, but less than 20 per cent	42.5 per cent	50 per cent
That portion representing a return on investment which is 20 per cent or greater	50 per cent	70 per cent

- (d) (i) The first period of commercial production referred to in subparagraphs (a) and (c) shall commence in the first accounting year of commercial production and terminate in the accounting year in which the contractor's development costs with interest on the unrecovered portion thereof are fully recovered by his cash surplus, as follows:
- In the first accounting year during which development costs are incurred, unrecovered development costs shall equal the development costs less cash surplus in that year. In each subsequent accounting year, unrecovered development costs shall equal the unrecovered development costs at the end of the preceding accounting year, plus interest thereon at the rate of 10 per cent per annum, plus development costs incurred in the current accounting year and less contractor's cash surplus in the current accounting year. The accounting year in which unrecovered development costs become zero for the first time shall be the accounting year in which the contractor's development costs with interest on the unrecovered portion thereof are fully recovered by his cash surplus. The contractor's cash surplus in any accounting year shall be his gross proceeds less his operating costs and less his payments to the Authority under subparagraph (c).
- (ii) The second period of commercial production shall commence in the accounting year following the termination of the first period of commercial production and shall continue until the end of the contract.
- (e) "Attributable net proceeds" means the product of the contractor's net proceeds and the ratio of the development costs in the mining sector to the contractor's

development costs. If the contractor engages in mining, transporting polymetallic nodules and production primarily of three processed metals, namely, cobalt, copper and nickel, the amount of attributable net proceeds shall not be less than 25 per cent of the contractor's net proceeds. Subject to subparagraph (n), in all other cases, including those where the contractor engages in mining, transporting polymetallic nodules, and production primarily of four processed metals, namely, cobalt, copper, manganese and nickel, the Authority may, in its rules, regulations and procedures, prescribe appropriate floors which shall bear the same relationship to each case as the 25 per cent floor does to the three-metal case.

- (f) "Contractor's net proceeds" means the contractor's gross proceeds less his operating costs and less the recovery of his development costs as set out in subparagraph (j).
- (g) (i) If the contractor engages in mining, transporting polymetallic nodules and production of processed metals, "contractor's gross proceeds" means the gross revenues from the sale of the processed metals and any other monies deemed reasonably attributable to operations under the contract in accordance with the financial rules, regulations and procedures of the Authority.
  - (ii) In all cases other than those specified in subparagraphs (g)(i) and (n)(iii), "contractor's gross proceeds" means the gross revenues from the sale of the semi-processed metals from the polymetallic nodules recovered from the area covered by the contract, and any other monies deemed reasonably attributable to operations under the contract in accordance with the financial rules, regulations and procedures of the Authority.
- (h) "Contractor's development costs" means:
  - (i) all expenditures incurred prior to the commencement of commercial production which are directly related to the development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract in all cases other than that specified in subparagraph (n), in conformity with generally recognized accounting principles, including, *inter alia*, costs of machinery, equipment, ships, processing plant, construction, buildings, land, roads, prospecting and exploration of the area covered by the contract, research and development, interest, required leases, licences and fees; and
  - (ii) expenditures similar to those set forth in (i) above incurred subsequent to the commencement of commercial production and necessary to carry out the plan of work, except those chargeable to operating costs.
- (i) The proceeds from the disposal of capital assets and the market value of those capital assets which are no longer required for operations under the contract and which are not sold shall be deducted from the contractor's development



costs during the relevant accounting year. When these deductions exceed the contractor's development costs the excess shall be added to the contractor's gross proceeds.

- (j) The contractor's development costs incurred prior to the commencement of commercial production referred to in subparagraphs (h)(i) and (n)(iv) shall be recovered in 10 equal annual instalments from the date of commencement of commercial production. The contractor's development costs incurred subsequent to the commencement of commercial production referred to in subparagraphs (h)(ii) and (n)(iv) shall be recovered in 10 or fewer equal annual instalments so as to ensure their complete recovery by the end of the contract.
- (k) "Contractor's operating costs" means all expenditures incurred after the commencement of commercial production in the operation of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract, in conformity with generally recognized accounting principles, including, *inter alia*, the annual fixed fee or the production charge, whichever is greater, expenditures for wages, salaries, employee benefits, materials, services, transporting, processing and marketing costs, interest, utilities, preservation of the marine environment, overhead and administrative costs specifically related to operations under the contract, and any net operating losses carried forward or backward as specified herein. Net operating losses may be carried forward for two consecutive years except in the last two years of the contract in which case they may be carried backward to the two preceding years.
- (l) If the contractor engages in mining, transporting of polymetallic nodules, and production of processed and semi-processed metals, "development costs of the mining sector" means the portion of the contractor's development costs which is directly related to the mining of the resources of the area covered by the contract, in conformity with generally recognized accounting principles, and the financial rules, regulations and procedures of the Authority, including, *inter alia*, application fee, annual fixed fee and, where applicable, costs of prospecting and exploration of the area covered by the contract, and a portion of research and development costs.
- (m) "Return on investment" in any accounting year means the ratio of attributable net proceeds in that year to the development costs of the mining sector. For the purpose of computing this ratio the development costs of the mining sector shall include expenditures on new or replacement equipment in the mining sector less the original cost of the equipment replaced.
- (n) If the contractor engages in mining only:
  - (i) "attributable net proceeds" means the whole of the contractor's net proceeds;
  - (ii) "contractor's net proceeds" shall be as defined in subparagraph (f);

- (iii) “contractor’s gross proceeds” means the gross revenues from the sale of the polymetallic nodules, and any other monies deemed reasonably attributable to operations under the contract in accordance with the financial rules, regulations and procedures of the Authority;
  - (iv) “contractor’s development costs” means all expenditures incurred prior to the commencement of commercial production as set forth in subparagraph (h)(i), and all expenditures incurred subsequent to the commencement of commercial production as set forth in subparagraph (h)(ii), which are directly related to the mining of the resources of the area covered by the contract, in conformity with generally recognized accounting principles;
  - (v) “contractor’s operating costs” means the contractor’s operating costs as in subparagraph (k) which are directly related to the mining of the resources of the area covered by the contract in conformity with generally recognized accounting principles;
  - (vi) “return on investment” in any accounting year means the ratio of the contractor’s net proceeds in that year to the contractor’s development costs. For the purpose of computing this ratio, the contractor’s development costs shall include expenditures on new or replacement equipment less the original cost of the equipment replaced.
- (o) The costs referred to in subparagraphs (h), (k), (l) and (n) in respect of interest paid by the contractor shall be allowed to the extent that, in all the circumstances, the Authority approves, pursuant to article 4, paragraph 1, of this Annex, the debt-equity ratio and the rates of interest as reasonable, having regard to existing commercial practice.
  - (p) The costs referred to in this paragraph shall not be interpreted as including payments of corporate income taxes or similar charges levied by States in respect of the operations of the contractor.
7. (a) “Processed metals”, referred to in paragraphs 5 and 6, means the metals in the most basic form in which they are customarily traded on international terminal markets. For this purpose, the Authority shall specify, in its financial rules, regulations and procedures, the relevant international terminal market. For the metals which are not traded on such markets, “processed metals” means the metals in the most basic form in which they are customarily traded in representative arm’s length transactions.
- (b) If the Authority cannot otherwise determine the quantity of the processed metals produced from the polymetallic nodules recovered from the area covered by the contract referred to in paragraphs 5(b) and 6(b), the quantity shall be determined on the basis of the metal content of the nodules, processing recovery efficiency and other relevant factors, in accordance with the rules, regulations and procedures of the Authority and in conformity with generally recognized accounting principles.

8. If an international terminal market provides a representative pricing mechanism for processed metals, polymetallic nodules and semi-processed metals from the nodules, the average price on that market shall be used. In all other cases, the Authority shall, after consulting the contractor, determine a fair price for the said products in accordance with paragraph 9.
9. (a) All costs, expenditures, proceeds and revenues and all determinations of price and value referred to in this article shall be the result of free market or arm's length transactions. In the absence thereof, they shall be determined by the Authority, after consulting the contractor, as though they were the result of free market or arm's length transactions, taking into account relevant transactions in other markets.  
(b) In order to ensure compliance with and enforcement of the provisions of this paragraph, the Authority shall be guided by the principles adopted for, and the interpretation given to, arm's length transactions by the Commission on Transnational Corporations of the United Nations, the Group of Experts on Tax Treaties between Developing and Developed Countries and other international organizations, and shall, in its rules, regulations and procedures, specify uniform and internationally acceptable accounting rules and procedures, and the means of selection by the contractor of certified independent accountants acceptable to the Authority for the purpose of carrying out auditing in compliance with those rules, regulations and procedures.
10. The contractor shall make available to the accountants, in accordance with the financial rules, regulations and procedures of the Authority, such financial data as are required to determine compliance with this article.
11. All costs, expenditures, proceeds and revenues, and all prices and values referred to in this article, shall be determined in accordance with generally recognized accounting principles and the financial rules, regulations and procedures of the Authority.
12. Payments to the Authority under paragraphs 5 and 6 shall be made in freely usable currencies or currencies which are freely available and effectively usable on the major foreign exchange markets or, at the contractor's option, in the equivalents of processed metals at market value. The market value shall be determined in accordance with paragraph 5(b). The freely usable currencies and currencies which are freely available and effectively usable on the major foreign exchange markets shall be defined in the rules, regulations and procedures of the Authority in accordance with prevailing international monetary practice.
13. All financial obligations of the contractor to the Authority, as well as all his fees, costs, expenditures, proceeds and revenues referred to in this article, shall be adjusted by expressing them in constant terms relative to a base year.

14. The Authority may, taking into account any recommendations of the Economic Planning Commission and the Legal and Technical Commission, adopt rules, regulations and procedures that provide for incentives, on a uniform and non-discriminatory basis, to contractors to further the objectives set out in paragraph 1.
15. In the event of a dispute between the Authority and a contractor over the interpretation or application of the financial terms of a contract, either party may submit the dispute to binding commercial arbitration, unless both parties agree to settle the dispute by other means, in accordance with article 188, paragraph 2.

#### **Article 14. Transfer of data**

1. The operator shall transfer to the Authority, in accordance with its rules, regulations and procedures and the terms and conditions of the plan of work, at time intervals determined by the Authority all data which are both necessary for and relevant to the effective exercise of the powers and functions of the principal organs of the Authority in respect of the area covered by the plan of work.
2. Transferred data in respect of the area covered by the plan of work, deemed proprietary, may only be used for the purposes set forth in this article. Data necessary for the formulation by the Authority of rules, regulations and procedures concerning protection of the marine environment and safety, other than equipment design data, shall not be deemed proprietary.
3. Data transferred to the Authority by prospectors, applicants for contracts or contractors, deemed proprietary, shall not be disclosed by the Authority to the Enterprise or to anyone external to the Authority, but data on the reserved areas may be disclosed to the Enterprise. Such data transferred by such persons to the Enterprise shall not be disclosed by the Enterprise to the Authority or to anyone external to the Authority.

#### **Article 15. Training programmes**

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

#### **Article 16. Exclusive right to explore and exploit**

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

**Article 17. Rules, regulations and procedures of the Authority**

1. The Authority shall adopt and uniformly apply rules, regulations and procedures in accordance with article 160, paragraph 2(f)(ii), and article 162, paragraph 2(o)(ii), for the exercise of its functions as set forth in Part XI on, *inter alia*, the following matters:
  - (a) administrative procedures relating to prospecting, exploration and exploitation in the Area;
  - (b) operations:
    - (i) size of area;
    - (ii) duration of operations;
    - (iii) performance requirements including assurances pursuant to article 4, paragraph 6(c), of this Annex;
    - (iv) categories of resources;
    - (v) renunciation of areas;
    - (vi) progress reports;
    - (vii) submission of data;
    - (viii) inspection and supervision of operations;
    - (ix) prevention of interference with other activities in the marine environment;
    - (x) transfer of rights and obligations by a contractor;
    - (xi) procedures for transfer of technology to developing States in accordance with article 144 and for their direct participation;
    - (xii) mining standards and practices, including those relating to operational safety, conservation of the resources and the protection of the marine environment;
    - (xiii) definition of commercial production;
    - (xiv) qualification standards for applicants;
  - (c) financial matters:
    - (i) establishment of uniform and non-discriminatory costing and accounting rules and the method of selection of auditors;
    - (ii) apportionment of proceeds of operations;
    - (iii) the incentives referred to in article 13 of this Annex;
  - (d) implementation of decisions taken pursuant to article 151, paragraph 10, and article 164, paragraph 2(d).
2. Rules, regulations and procedures on the following items shall fully reflect the objective criteria set out below:
  - (a) Size of areas:

The Authority shall determine the appropriate size of areas for exploration which may be up to twice as large as those for exploitation in order to permit intensive exploration operations. The size of area shall be calculated to satisfy the requirements of article 8 of this Annex on reservation of areas as well as stated production requirements consistent with article 151 in accordance with the terms of the contract taking into account the state of the art of technology then available for seabed mining and the relevant physical characteristics of the areas. Areas shall be neither smaller nor larger than are necessary to satisfy this objective.

(b) Duration of operations:

- (i) Prospecting shall be without time-limit;
- (ii) Exploration should be of sufficient duration to permit a thorough survey of the specific area, the design and construction of mining equipment for the area and the design and construction of small and medium-size processing plants for the purpose of testing mining and processing systems;
- (iii) The duration of exploitation should be related to the economic life of the mining project, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and commercial viability. Exploitation should be of sufficient duration to permit commercial extraction of minerals of the area and should include a reasonable time period for construction of commercial-scale mining and processing systems, during which period commercial production should not be required. The total duration of exploitation, however, should also be short enough to give the Authority an opportunity to amend the terms and conditions of the plan of work at the time it considers renewal in accordance with rules, regulations and procedures which it has adopted subsequent to approving the plan of work.

(c) Performance requirements:

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

for this construction after the completion of the exploration stage and reasonable allowance should be made for unavoidable delays in the construction schedule. Once commercial production is achieved, the Authority shall within reasonable limits and taking into consideration all relevant factors require the operator to maintain commercial production throughout the period of the plan of work.

3. Categories of resources:

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

- (i) that certain resources require the use of similar mining methods; and
- (ii) that some resources can be developed simultaneously without undue interference between operators developing different resources in the same area.

Nothing in this subparagraph shall preclude the Authority from approving a plan of work with respect to more than one category of resources in the same area to the same applicant.

4. Renunciation of areas:

The operator shall have the right at any time to renounce without penalty the whole or part of his rights in the area covered by a plan of work.

5. Protection of the marine environment:

Rules, regulations and procedures shall be drawn up in order to secure effective protection of the marine environment from harmful effects directly resulting from activities in the Area or from shipboard processing immediately above a mine site of minerals derived from that mine site, taking into account the extent to which such harmful effects may directly result from drilling, dredging, coring and excavation and from disposal, dumping and discharge into the marine environment of sediment, wastes or other effluents.

6. Commercial production:

Commercial production shall be deemed to have begun if an operator engages in sustained large-scale recovery operations which yield a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information gathering, analysis or the testing of equipment or plant.

## Article 18. Penalties

1. A contractor's rights under the contract may be suspended or terminated only in the following cases:

- (a) if, in spite of warnings by the Authority, the contractor has conducted his activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, Part XI and the rules, regulations and procedures of the Authority; or
  - (b) if the contractor has failed to comply with a final binding decision of the dispute settlement body applicable to him.
2. In the case of any violation of the contract not covered by paragraph 1(a), or in lieu of suspension or termination under paragraph 1(a), the Authority may impose upon the contractor monetary penalties proportionate to the seriousness of the violation.
3. Except for emergency orders under article 162, paragraph 2(w), the Authority may not execute a decision involving monetary penalties, suspension or termination until the contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to him pursuant to Part XI, section 5.

#### **Article 19. Revision of contract**

1. When circumstances have arisen or are likely to arise which, in the opinion of either party, would render the contract inequitable or make it impracticable or impossible to achieve the objectives set out in the contract or in Part XI, the parties shall enter into negotiations to revise it accordingly.
2. Any contract entered into in accordance with article 153, paragraph 3, may be revised only with the consent of the parties.

#### **Article 20. Transfer of rights and obligations**

The rights and obligations arising under a contract may be transferred only with the consent of the Authority, and in accordance with its rules, regulations and procedures. The Authority shall not unreasonably withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant and assumes all of the obligations of the transferor and if the transfer does not confer to the transferee a plan of work, the approval of which would be forbidden by article 6, paragraph 3(c), of this Annex.

#### **Article 21. Applicable law**

1. The contract shall be governed by the terms of the contract, the rules, regulations and procedures of the Authority, Part XI and other rules of international law not incompatible with this Convention.
2. Any final decision rendered by a court or tribunal having jurisdiction under this Convention relating to the rights and obligations of the Authority and of the contractor shall be enforceable in the territory of each State Party.



3. No State Party may impose conditions on a contractor that are inconsistent with Part XI. However, the application by a State Party to contractors sponsored by it, or to ships flying its flag, of environmental or other laws and regulations more stringent than those in the rules, regulations and procedures of the Authority adopted pursuant to article 17, paragraph 2(f), of this Annex shall not be deemed inconsistent with Part XI.

#### **Article 22. Responsibility**

The contractor shall have responsibility or liability for any damage arising out of wrongful acts in the conduct of its operations, account being taken of contributory acts or omissions by the Authority. Similarly, the Authority shall have responsibility or liability for any damage arising out of wrongful acts in the exercise of its powers and functions, including violations under article 168, paragraph 2, account being taken of contributory acts or omissions by the contractor. Liability in every case shall be for the actual amount of damage.

## **Annex IV Statute of the Enterprise**

### **Article 1. Purposes**

1. The Enterprise is the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2 (a), as well as the transporting, processing and marketing of minerals recovered from the Area.
2. In carrying out its purposes and in the exercise of its functions, the Enterprise shall act in accordance with this Convention and the rules, regulations and procedures of the Authority.
3. In developing the resources of the Area pursuant to paragraph 1, the Enterprise shall, subject to this Convention, operate in accordance with sound commercial principles.

### **Article 2. Relationship to the Authority**

1. Pursuant to article 170, the Enterprise shall act in accordance with the general policies of the Assembly and the directives of the Council.
2. Subject to paragraph 1, the Enterprise shall enjoy autonomy in the conduct of its operations.
3. Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority, or make the Authority liable for the acts or obligations of the Enterprise.

### **Article 3. Limitation of liability**

Without prejudice to article 11, paragraph 3, of this Annex, no member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.

### **Article 4. Structure**

The Enterprise shall have a Governing Board, a Director-General and the staff necessary for the exercise of its functions.

### **Article 5. Governing Board**

1. The Governing Board shall be composed of 15 members elected by the Assembly in accordance with article 160, paragraph 2(c). In the election of the members of the Board, due regard shall be paid to the principle of equitable geographical distribution. In submitting nominations of candidates for election to the Board, members of the Authority shall bear in mind the need to nominate candidates of

the highest standard of competence, with qualifications in relevant fields, so as to ensure the viability and success of the Enterprise.

2. Members of the Board shall be elected for four years and may be re-elected; and due regard shall be paid to the principle of rotation of membership.
3. Members of the Board shall continue in office until their successors are elected. If the office of a member of the Board becomes vacant, the Assembly shall, in accordance with article 160, paragraph 2(c), elect a new member for the remainder of his predecessor's term.
4. Members of the Board shall act in their personal capacity. In the performance of their duties they shall not seek or receive instructions from any government or from any other source. Each member of the Authority shall respect the independent character of the members of the Board and shall refrain from all attempts to influence any of them in the discharge of their duties.
5. Each member of the Board shall receive remuneration to be paid out of the funds of the Enterprise. The amount of remuneration shall be fixed by the Assembly, upon the recommendation of the Council.
6. The Board shall normally function at the principal office of the Enterprise and shall meet as often as the business of the Enterprise may require.
7. Two thirds of the members of the Board shall constitute a quorum.
8. Each member of the Board shall have one vote. All matters before the Board shall be decided by a majority of its members. If a member has a conflict of interest on a matter before the Board he shall refrain from voting on that matter.
9. Any member of the Authority may ask the Board for information in respect of its operations which particularly affect that member. The Board shall endeavour to provide such information.

#### **Article 6. Powers and functions of the Governing Board**

The Governing Board shall direct the operations of the Enterprise. Subject to this Convention, the Governing Board shall exercise the powers necessary to fulfil the purposes of the Enterprise, including powers:

- (a) to elect a Chairman from among its members;
- (b) to adopt its rules of procedure;
- (c) to draw up and submit formal written plans of work to the Council in accordance with article 153, paragraph 3, and article 162, paragraph 2(j);
- (d) to develop plans of work and programmes for carrying out the activities specified in article 170;

- (e) to prepare and submit to the Council applications for production authorizations in accordance with article 151, paragraphs 2 to 7;
- (f) to authorize negotiations concerning the acquisition of technology, including those provided for in Annex III, article 5, paragraph 3(a), (c) and (d), and to approve the results of those negotiations;
- (g) to establish terms and conditions, and to authorize negotiations, concerning joint ventures and other forms of joint arrangements referred to in Annex III, articles 9 and 11, and to approve the results of such negotiations;
- (h) to recommend to the Assembly what portion of the net income of the Enterprise should be retained as its reserves in accordance with article 160, paragraph 2(f), and article 10 of this Annex;
- (i) to approve the annual budget of the Enterprise;
- (j) to authorize the procurement of goods and services in accordance with article 12, paragraph 3, of this Annex;
- (k) to submit an annual report to the Council in accordance with article 9 of this Annex;
- (l) to submit to the Council for the approval of the Assembly draft rules in respect of the organization, management, appointment and dismissal of the staff of the Enterprise and to adopt regulations to give effect to such rules;
- (m) to borrow funds and to furnish such collateral or other security as it may determine in accordance with article 11, paragraph 2, of this Annex;
- (n) to enter into any legal proceedings, agreements and transactions and to take any other actions in accordance with article 13 of this Annex;
- (o) to delegate, subject to the approval of the Council, any non-discretionary powers to the Director-General and to its committees.

#### **Article 7. Director-General and staff of the Enterprise**

1. The Assembly shall, upon the recommendation of the Council and the nomination of the Governing Board, elect the Director-General of the Enterprise who shall not be a member of the Board. The Director-General shall hold office for a fixed term, not exceeding five years, and may be re-elected for further terms.
2. The Director-General shall be the legal representative and chief executive of the Enterprise and shall be directly responsible to the Board for the conduct of the operations of the Enterprise. He shall be responsible for the organization, management, appointment and dismissal of the staff of the Enterprise in accordance with the rules and regulations referred to in article 6, subparagraph (l), of this Annex.

He shall participate, without the right to vote, in the meetings of the Board and may participate, without the right to vote, in the meetings of the Assembly and the Council when these organs are dealing with matters concerning the Enterprise.

3. The paramount consideration in the recruitment and employment of the staff and in the determination of their conditions of service shall be the necessity of securing the highest standards of efficiency and of technical competence. Subject to this consideration, due regard shall be paid to the importance of recruiting the staff on an equitable geographical basis.
4. In the performance of their duties the Director-General and the staff shall not seek or receive instructions from any government or from any other source external to the Enterprise. They shall refrain from any action which might reflect on their position as international officials of the Enterprise responsible only to the Enterprise. Each State Party undertakes to respect the exclusively international character of the responsibilities of the Director-General and the staff and not to seek to influence them in the discharge of their responsibilities.
5. The responsibilities set forth in article 168, paragraph 2, are equally applicable to the staff of the Enterprise.

#### **Article 8. Location**

The Enterprise shall have its principal office at the seat of the Authority. The Enterprise may establish other offices and facilities in the territory of any State Party with the consent of that State Party.

#### **Article 9. Reports and financial statements**

1. The Enterprise shall, not later than three months after the end of each financial year, submit to the Council for its consideration an annual report containing an audited statement of its accounts and shall transmit to the Council at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.
2. The Enterprise shall publish its annual report and such other reports as it finds appropriate.
3. All reports and financial statements referred to in this article shall be distributed to the members of the Authority.

#### **Article 10. Allocation of net income**

1. Subject to paragraph 3, the Enterprise shall make payments to the Authority under Annex III, article 13, or their equivalent.

2. The Assembly shall, upon the recommendation of the Governing Board, determine what portion of the net income of the Enterprise shall be retained as reserves of the Enterprise. The remainder shall be transferred to the Authority.
3. During an initial period required for the Enterprise to become self-supporting, which shall not exceed 10 years from the commencement of commercial production by it, the Assembly shall exempt the Enterprise from the payments referred to in paragraph 1, and shall leave all of the net income of the Enterprise in its reserves.

#### **Article 11. Finances**

1. The funds of the Enterprise shall include:
  - (a) amounts received from the Authority in accordance with article 173, paragraph 2(b);
  - (b) voluntary contributions made by States Parties for the purpose of financing activities of the Enterprise;
  - (c) amounts borrowed by the Enterprise in accordance with paragraphs 2 and 3;
  - (d) income of the Enterprise from its operations;
  - (e) other funds made available to the Enterprise to enable it to commence operations as soon as possible and to carry out its functions.
2. (a) The Enterprise shall have the power to borrow funds and to furnish such collateral or other security as it may determine. Before making a public sale of its obligations in the financial markets or currency of a State Party, the Enterprise shall obtain the approval of that State Party. The total amount of borrowings shall be approved by the Council upon the recommendation of the Governing Board.
  - (b) States Parties shall make every reasonable effort to support applications by the Enterprise for loans on capital markets and from international financial institutions.
3. (a) The Enterprise shall be provided with the funds necessary to explore and exploit one mine site, and to transport, process and market the minerals recovered therefrom and the nickel, copper, cobalt and manganese obtained, and to meet its initial administrative expenses. The amount of the said funds, and the criteria and factors for its adjustment, shall be included by the Preparatory Commission in the draft rules, regulations and procedures of the Authority.
  - (b) All States Parties shall make available to the Enterprise an amount equivalent to one half of the funds referred to in subparagraph (a) by way of long-term interest-free loans in accordance with the scale of assessments for the United Nations regular budget in force at the time when the assessments are made,

adjusted to take into account the States which are not members of the United Nations. Debts incurred by the Enterprise in raising the other half of the funds shall be guaranteed by all States Parties in accordance with the same scale.

- (c) If the sum of the financial contributions of States Parties is less than the funds to be provided to the Enterprise under subparagraph (a), the Assembly shall, at its first session, consider the extent of the shortfall and adopt by consensus measures for dealing with this shortfall, taking into account the obligation of States Parties under subparagraphs (a) and (b) and any recommendations of the Preparatory Commission.
- (d)
  - (i) Each State Party shall, within 60 days after the entry into force of this Convention, or within 30 days after the deposit of its instrument of ratification or accession, whichever is later, deposit with the Enterprise irrevocable, non-negotiable, non-interest-bearing promissory notes in the amount of the share of such State Party of interest-free loans pursuant to subparagraph (b).
  - (ii) The Board shall prepare, at the earliest practicable date after this Convention enters into force, and thereafter at annual or other appropriate intervals, a schedule of the magnitude and timing of its requirements for the funding of its administrative expenses and for activities carried out by the Enterprise in accordance with article 170 and article 12 of this Annex.
  - (iii) The States Parties shall, thereupon, be notified by the Enterprise, through the Authority, of their respective shares of the funds in accordance with subparagraph (b), required for such expenses. The Enterprise shall encash such amounts of the promissory notes as may be required to meet the expenditure referred to in the schedule with respect to interest-free loans.
  - (iv) States Parties shall, upon receipt of the notification, make available their respective shares of debt guarantees for the Enterprise in accordance with subparagraph (b).
- (e)
  - (i) If the Enterprise so requests, State Parties may provide debt guarantees in addition to those provided in accordance with the scale referred to in subparagraph (b).
  - (ii) In lieu of debt guarantees, a State Party may make a voluntary contribution to the Enterprise in an amount equivalent to that portion of the debts which it would otherwise be liable to guarantee.
- (f) Repayment of the interest-bearing loans shall have priority over the repayment of the interest-free loans. Repayment of interest-free loans shall be in accordance with a schedule adopted by the Assembly, upon the recommendation of the Council and the advice of the Board. In the exercise of this function the Board shall be guided by the relevant provisions of the rules, regulations and procedures of the Authority, which shall take into account the paramount importance of ensuring the effective functioning of the Enterprise and, in particular, ensuring its financial independence.

- (g) Funds made available to the Enterprise shall be in freely usable currencies or currencies which are freely available and effectively usable in the major foreign exchange markets. These currencies shall be defined in the rules, regulations and procedures of the Authority in accordance with prevailing international monetary practice. Except as provided in paragraph 2, no State Party shall maintain or impose restrictions on the holding, use or exchange by the Enterprise of these funds.
  - (h) “Debt guarantee” means a promise of a State Party to creditors of the Enterprise to pay, *pro rata* in accordance with the appropriate scale, the financial obligations of the Enterprise covered by the guarantee following notice by the creditors to the State Party of a default by the Enterprise. Procedures for the payment of those obligations shall be in conformity with the rules, regulations and procedures of the Authority.
4. The funds, assets and expenses of the Enterprise shall be kept separate from those of the Authority. This article shall not prevent the Enterprise from making arrangements with the Authority regarding facilities, personnel and services and arrangements for reimbursement of administrative expenses paid by either on behalf of the other.
  5. The records, books and accounts of the Enterprise, including its annual financial statements, shall be audited annually by an independent auditor appointed by the Council.

## **Article 12. Operations**

1. The Enterprise shall propose to the Council projects for carrying out activities in accordance with article 170. Such proposals shall include a formal written plan of work for activities in the Area in accordance with article 153, paragraph 3, and all such other information and data as may be required from time to time for its appraisal by the Legal and Technical Commission and approval by the Council.
2. Upon approval by the Council, the Enterprise shall execute the project on the basis of the formal written plan of work referred to in paragraph 1.
3. (a) If the Enterprise does not possess the goods and services required for its operations it may procure them. For that purpose, it shall issue invitations to tender and award contracts to bidders offering the best combination of quality, price and delivery time.  
(b) If there is more than one bid offering such a combination, the contract shall be awarded in accordance with:
  - (i) the principle of non-discrimination on the basis of political or other considerations not relevant to the carrying out of operations with due diligence and efficiency; and



- (ii) guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in developing States, including the land-locked and geographically disadvantaged among them.
  - (c) The Governing Board may adopt rules determining the special circumstances in which the requirement of invitations to bid may, in the best interests of the Enterprise, be dispensed with.
4. The Enterprise shall have title to all minerals and processed substances produced by it.
  5. The Enterprise shall sell its products on a non-discriminatory basis. It shall not give non-commercial discounts.
  6. Without prejudice to any general or special power conferred on the Enterprise under any other provision of this Convention, the Enterprise shall exercise such powers incidental to its business as shall be necessary.
  7. The Enterprise shall not interfere in the political affairs of any State Party; nor shall it be influenced in its decisions by the political character of the State Party concerned. Only commercial considerations shall be relevant to its decisions, and these considerations shall be weighed impartially in order to carry out the purposes specified in article 1 of this Annex.

### **Article 13. Legal status, privileges and immunities**

1. To enable the Enterprise to exercise its functions, the status, privileges and immunities set forth in this article shall be accorded to the Enterprise in the territories of States Parties. To give effect to this principle the Enterprise and States Parties may, where necessary, enter into special agreements.
2. The Enterprise shall have such legal capacity as is necessary for the exercise of its functions and the fulfilment of its purposes and, in particular, the capacity:
  - (a) to enter into contracts, joint arrangements or other arrangements, including agreements with States and international organizations;
  - (b) to acquire, lease, hold and dispose of immovable and movable property;
  - (c) to be a party to legal proceedings.
3. (a) Actions may be brought against the Enterprise only in a court of competent jurisdiction in the territory of a State Party in which the Enterprise:
  - (i) has an office or facility;
  - (ii) has appointed an agent for the purpose of accepting service or notice of process;
  - (iii) has entered into a contract for goods or services;

- (iv) has issued securities; or
  - (v) is otherwise engaged in commercial activity.
- (b) The property and assets of the Enterprise, wherever located and by whomsoever held, shall be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Enterprise.
4. (a) The property and assets of the Enterprise, wherever located and by whomsoever held, shall be immune from requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.
- (b) The property and assets of the Enterprise, wherever located and by whomsoever held, shall be free from discriminatory restrictions, regulations, controls and moratoria of any nature.
- (c) The Enterprise and its employees shall respect local laws and regulations in any State or territory in which the Enterprise or its employees may do business or otherwise act.
- (d) States Parties shall ensure that the Enterprise enjoys all rights, privileges and immunities accorded by them to entities conducting commercial activities in their territories. These rights, privileges and immunities shall be accorded to the Enterprise on no less favourable a basis than that on which they are accorded to entities engaged in similar commercial activities. If special privileges are provided by States Parties for developing States or their commercial entities, the Enterprise shall enjoy those privileges on a similarly preferential basis.
- (e) States Parties may provide special incentives, rights, privileges and immunities to the Enterprise without the obligation to provide such incentives, rights, privileges and immunities to other commercial entities.
5. The Enterprise shall negotiate with the host countries in which its offices and facilities are located for exemption from direct and indirect taxation.
6. Each State Party shall take such action as is necessary for giving effect in terms of its own law to the principles set forth in this Annex and shall inform the Enterprise of the specific action which it has taken.
7. The Enterprise may waive any of the privileges and immunities conferred under this article or in the special agreements referred to in paragraph 1 to such extent and upon such conditions as it may determine.

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## **Annex V Conciliation**

### **Section 1. Conciliation procedure pursuant to section 1 of Part XV**

#### **Article 1. Institution of proceedings**

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

#### **Article 2. List of conciliators**

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

#### **Article 3. Constitution of conciliation commission**

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

- (a) Subject to subparagraph (g), the conciliation commission shall consist of five members.
- (b) The party instituting the proceedings shall appoint two conciliators to be chosen preferably from the list referred to in article 2 of this Annex, one of whom may be its national, unless the parties otherwise agree. Such appointments shall be included in the notification referred to in article 1 of this Annex.
- (c) The other party to the dispute shall appoint two conciliators in the manner set forth in subparagraph (b) within 21 days of receipt of the notification referred to in article 1 of this Annex. If the appointments are not made within that period, the party instituting the proceedings may, within one week of the expiration of that period, either terminate the proceedings by notification addressed to the other party or request the Secretary-General of the United Nations to make the appointments in accordance with subparagraph (e).
- (d) Within 30 days after all four conciliators have been appointed, they shall appoint a fifth conciliator chosen from the list referred to in article 2 of this Annex, who shall

be chairman. If the appointment is not made within that period, either party may, within one week of the expiration of that period, request the Secretary-General of the United Nations to make the appointment in accordance with subparagraph (e).

- (e) Within 30 days of the receipt of a request under subparagraph (c) or (d), the Secretary-General of the United Nations shall make the necessary appointments from the list referred to in article 2 of this Annex in consultation with the parties to the dispute.
- (f) Any vacancy shall be filled in the manner prescribed for the initial appointment.
- (g) Two or more parties which determine by agreement that they are in the same interest shall appoint two conciliators jointly. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint conciliators separately.
- (h) In disputes involving more than two parties having separate interests, or where there is disagreement as to whether they are of the same interest, the parties shall apply subparagraphs (a) to (f) in so far as possible.

#### **Article 4. Procedure**

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

#### **Article 5. Amicable settlement**

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

#### **Article 6. Functions of the commission**

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

#### **Article 7. Report**

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

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

### **Article 8. Termination**

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

### **Article 9. Fees and expenses**

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

### **Article 10. Right of parties to modify procedure**

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

## **Section 2. Compulsory submission to conciliation procedure pursuant to section 3 of Part XV**

### **Article 11. Institution of proceedings**

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

### **Article 12. Failure to reply or to submit to conciliation**

The failure of a party or parties to the dispute to reply to notification of institution of proceedings or to submit to such proceedings shall not constitute a bar to the proceedings.

### **Article 13. Competence**

A disagreement as to whether a conciliation commission acting under this section has competence shall be decided by the commission.

### **Article 14. Application of section 1**

Articles 2 to 10 of section 1 of this Annex apply subject to this section.

## **Annex VI**

# **Statute of the International Tribunal for the Law of the Sea**

### **Article 1. General provisions**

1. The International Tribunal for the Law of the Sea is constituted and shall function in accordance with the provisions of this Convention and this Statute.
2. The seat of the Tribunal shall be in the Free and Hanseatic City of Hamburg in the Federal Republic of Germany.
3. The Tribunal may sit and exercise its functions elsewhere whenever it considers this desirable.
4. A reference of a dispute to the Tribunal shall be governed by the provisions of Parts XI and XV.

### **Section 1**

## **Organization of the Tribunal**

### **Article 2. Composition**

1. The Tribunal shall be composed of a body of 21 independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea.
2. In the Tribunal as a whole the representation of the principal legal systems of the world and equitable geographical distribution shall be assured.

### **Article 3. Membership**

1. No two members of the Tribunal may be nationals of the same State. A person who for the purposes of membership in the Tribunal could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.
2. There shall be no fewer than three members from each geographical group as established by the General Assembly of the United Nations.

### **Article 4. Nominations and elections**

1. Each State Party may nominate not more than two persons having the qualifications prescribed in article 2 of this Annex. The members of the Tribunal shall be elected from the list of persons thus nominated.
2. At least three months before the date of the election, the Secretary-General of the United Nations in the case of the first election and the Registrar of the Tribunal in the case of subsequent elections shall address a written invitation to the States

Parties to submit their nominations for members of the Tribunal within two months. He shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties before the seventh day of the last month before the date of each election.

3. The first election shall be held within six months of the date of entry into force of this Convention.
4. The members of the Tribunal shall be elected by secret ballot. Elections shall be held at a meeting of the States Parties convened by the Secretary-General of the United Nations in the case of the first election and by a procedure agreed to by the States Parties in the case of subsequent elections. Two thirds of the States Parties shall constitute a quorum at that meeting. The persons elected to the Tribunal shall be those nominees who obtain the largest number of votes and a two-thirds majority of the States Parties present and voting, provided that such majority includes a majority of the States Parties.

#### **Article 5. Term of office**

1. The members of the Tribunal shall be elected for nine years and may be re-elected; provided, however, that of the members elected at the first election, the terms of seven members shall expire at the end of three years and the terms of seven more members shall expire at the end of six years.
2. The members of the Tribunal whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General of the United Nations immediately after the first election.
3. The members of the Tribunal shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any proceedings which they may have begun before the date of their replacement.
4. In the case of the resignation of a member of the Tribunal, the letter of resignation shall be addressed to the President of the Tribunal. The place becomes vacant on the receipt of that letter.

#### **Article 6. Vacancies**

1. Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Registrar shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in article 4 of this Annex, and the date of the election shall be fixed by the President of the Tribunal after consultation with the States Parties.
2. A member of the Tribunal elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

**Article 7. Incompatible activities**

1. No member of the Tribunal may exercise any political or administrative function, or associate actively with or be financially interested in any of the operations of any enterprise concerned with the exploration for or exploitation of the resources of the sea or the seabed or other commercial use of the sea or the seabed.
2. No member of the Tribunal may act as agent, counsel or advocate in any case.
3. Any doubt on these points shall be resolved by decision of the majority of the other members of the Tribunal present.

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

1. No member of the Tribunal may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court or tribunal, or in any other capacity.
2. If, for some special reason, a member of the Tribunal considers that he should not take part in the decision of a particular case, he shall so inform the President of the Tribunal.
3. If the President considers that for some special reason one of the members of the Tribunal should not sit in a particular case, he shall give him notice accordingly.
4. Any doubt on these points shall be resolved by decision of the majority of the other members of the Tribunal present.

**Article 9. Consequence of ceasing to fulfil required conditions**

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

**Article 10. Privileges and immunities**

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

**Article 11. Solemn declaration by members**

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



**Article 12. President, Vice-President and Registrar**

1. The Tribunal shall elect its President and Vice-President for three years; they may be re-elected.
2. The Tribunal shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.
3. The President and the Registrar shall reside at the seat of the Tribunal.

**Article 13. Quorum**

1. All available members of the Tribunal shall sit; a quorum of 11 elected members shall be required to constitute the Tribunal.
2. Subject to article 17 of this Annex, the Tribunal shall determine which members are available to constitute the Tribunal for the consideration of a particular dispute, having regard to the effective functioning of the chambers as provided for in articles 14 and 15 of this Annex.
3. All disputes and applications submitted to the Tribunal shall be heard and determined by the Tribunal, unless article 14 of this Annex applies, or the parties request that it shall be dealt with in accordance with article 15 of this Annex.

**Article 14. Seabed Disputes Chamber**

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

**Article 15. Special chambers**

1. The Tribunal may form such chambers, composed of three or more of its elected members, as it considers necessary for dealing with particular categories of disputes.
2. The Tribunal shall form a chamber for dealing with a particular dispute submitted to it if the parties so request. The composition of such a chamber shall be determined by the Tribunal with the approval of the parties.
3. With a view to the speedy dispatch of business, the Tribunal shall form annually a chamber composed of five of its elected members which may hear and determine disputes by summary procedure. Two alternative members shall be selected for the purpose of replacing members who are unable to participate in a particular proceeding.
4. Disputes shall be heard and determined by the chambers provided for in this article if the parties so request.

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

#### **Article 16. Rules of the Tribunal**

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

#### **Article 17. Nationality of members**

1. Members of the Tribunal of the nationality of any of the parties to a dispute shall retain their right to participate as members of the Tribunal.
2. If the Tribunal, when hearing a dispute, includes upon the bench a member of the nationality of one of the parties, any other party may choose a person to participate as a member of the Tribunal.
3. If the Tribunal, when hearing a dispute, does not include upon the bench a member of the nationality of the parties, each of those parties may choose a person to participate as a member of the Tribunal.
4. This article applies to the chambers referred to in articles 14 and 15 of this Annex. In such cases, the President, in consultation with the parties, shall request specified members of the Tribunal forming the chamber, as many as necessary, to give place to the members of the Tribunal of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the members specially chosen by the parties.
5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be considered as one party only. Any doubt on this point shall be settled by the decision of the Tribunal.
6. Members chosen in accordance with paragraphs 2, 3 and 4 shall fulfil the conditions required by articles 2, 8 and 11 of this Annex. They shall participate in the decision on terms of complete equality with their colleagues.

#### **Article 18. Remuneration of members**

1. Each elected member of the Tribunal shall receive an annual allowance and, for each day on which he exercises his functions, a special allowance, provided that in any year the total sum payable to any member as special allowance shall not exceed the amount of the annual allowance.
2. The President shall receive a special annual allowance.
3. The Vice-President shall receive a special allowance for each day on which he acts as President.

4. The members chosen under article 17 of this Annex, other than elected members of the Tribunal, shall receive compensation for each day on which they exercise their functions.
5. The salaries, allowances and compensation shall be determined from time to time at meetings of the States Parties, taking into account the workload of the Tribunal. They may not be decreased during the term of office.
6. The salary of the Registrar shall be determined at meetings of the States Parties, on the proposal of the Tribunal.
7. Regulations adopted at meetings of the States Parties shall determine the conditions under which retirement pensions may be given to members of the Tribunal and to the Registrar, and the conditions under which members of the Tribunal and Registrar shall have their travelling expenses refunded.
8. The salaries, allowances, and compensation shall be free of all taxation.

#### **Article 19. Expenses of the Tribunal**

1. The expenses of the Tribunal shall be borne by the States Parties and by the Authority on such terms and in such a manner as shall be decided at meetings of the States Parties.
2. When an entity other than a State Party or the Authority is a party to a case submitted to it, the Tribunal shall fix the amount which that party is to contribute towards the expenses of the Tribunal.

### **Section 2 Competence**

#### **Article 20. Access to the Tribunal**

1. The Tribunal shall be open to States Parties.
2. The Tribunal shall be open to entities other than States Parties in any case expressly provided for in Part XI or in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case.

#### **Article 21. Jurisdiction**

The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

**Article 22. Reference of disputes subject to other agreements**

If all the parties to a treaty or convention already in force and concerning the subject-matter covered by this Convention so agree, any disputes concerning the interpretation or application of such treaty or convention may, in accordance with such agreement, be submitted to the Tribunal.

**Article 23. Applicable law**

The Tribunal shall decide all disputes and applications in accordance with article 293.

**Section 3  
Procedure****Article 24. Institution of proceedings**

1. Disputes are submitted to the Tribunal, as the case may be, either by notification of a special agreement or by written application, addressed to the Registrar. In either case, the subject of the dispute and the parties shall be indicated.
2. The Registrar shall forthwith notify the special agreement or the application to all concerned.
3. The Registrar shall also notify all States Parties.

**Article 25. Provisional measures**

1. In accordance with article 290, the Tribunal and its Seabed Disputes Chamber shall have the power to prescribe provisional measures.
2. If the Tribunal is not in session or a sufficient number of members is not available to constitute a quorum, the provisional measures shall be prescribed by the chamber of summary procedure formed under article 15, paragraph 3, of this Annex. Notwithstanding article 15, paragraph 4, of this Annex, such provisional measures may be adopted at the request of any party to the dispute. They shall be subject to review and revision by the Tribunal.

**Article 26. Hearing**

1. The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President. If neither is able to preside, the senior judge present of the Tribunal shall preside.
2. The hearing shall be public, unless the Tribunal decides otherwise or unless the parties demand that the public be not admitted.

**Article 27. Conduct of case**

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

**Article 28. Default**

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

**Article 29. Majority for decision**

1. All questions shall be decided by a majority of the members of the Tribunal who are present.
2. In the event of an equality of votes, the President or the member of the Tribunal who acts in his place shall have a casting vote.

**Article 30. Judgment**

1. The judgment shall state the reasons on which it is based.
2. It shall contain the names of the members of the Tribunal who have taken part in the decision.
3. If the judgment does not represent in whole or in part the unanimous opinion of the members of the Tribunal, any member shall be entitled to deliver a separate opinion.
4. The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the parties to the dispute.

**Article 31. Request to intervene**

1. Should a State Party consider that it has an interest of a legal nature which may be affected by the decision in any dispute, it may submit a request to the Tribunal to be permitted to intervene.
2. It shall be for the Tribunal to decide upon this request.
3. If a request to intervene is granted, the decision of the Tribunal in respect of the dispute shall be binding upon the intervening State Party in so far as it relates to matters in respect of which that State Party intervened.

**Article 32. Right to intervene in cases of interpretation or application**

1. Whenever the interpretation or application of this Convention is in question, the Registrar shall notify all States Parties forthwith.
2. Whenever pursuant to article 21 or 22 of this Annex the interpretation or application of an international agreement is in question, the Registrar shall notify all the parties to the agreement.
3. Every party referred to in paragraphs 1 and 2 has the right to intervene in the proceedings; if it uses this right, the interpretation given by the judgment will be equally binding upon it.

**Article 33. Finality and binding force of decisions**

1. The decision of the Tribunal is final and shall be complied with by all the parties to the dispute.
2. The decision shall have no binding force except between the parties in respect of that particular dispute.
3. In the event of dispute as to the meaning or scope of the decision, the Tribunal shall construe it upon the request of any party.

**Article 34. Costs**

Unless otherwise decided by the Tribunal, each party shall bear its own costs.

**Section 4  
Seabed Disputes Chamber****Article 35. Composition**

1. The Seabed Disputes Chamber referred to in article 14 of this Annex shall be composed of 11 members, selected by a majority of the elected members of the Tribunal from among them.
2. In the selection of the members of the Chamber, the representation of the principal legal systems of the world and equitable geographical distribution shall be assured. The Assembly of the Authority may adopt recommendations of a general nature relating to such representation and distribution.
3. The members of the Chamber shall be selected every three years and may be selected for a second term.
4. The Chamber shall elect its President from among its members, who shall serve for the term for which the Chamber has been selected.

5. If any proceedings are still pending at the end of any three-year period for which the Chamber has been selected, the Chamber shall complete the proceedings in its original composition.
6. If a vacancy occurs in the Chamber, the Tribunal shall select a successor from among its elected members, who shall hold office for the remainder of his predecessor's term.
7. A quorum of seven of the members selected by the Tribunal shall be required to constitute the Chamber.

#### **Article 36. Ad hoc chambers**

1. The Seabed Disputes Chamber shall form an ad hoc chamber, composed of three of its members, for dealing with a particular dispute submitted to it in accordance with article 188, paragraph 1(b). The composition of such a chamber shall be determined by the Seabed Disputes Chamber with the approval of the parties.
2. If the parties do not agree on the composition of an ad hoc chamber, each party to the dispute shall appoint one member, and the third member shall be appointed by them in agreement. If they disagree, or if any party fails to make an appointment, the President of the Seabed Disputes Chamber shall promptly make the appointment or appointments from among its members, after consultation with the parties.
3. Members of the ad hoc chamber must not be in the service of, or nationals of, any of the parties to the dispute.

#### **Article 37. Access**

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

#### **Article 38. Applicable law**

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

- (a) the rules, regulations and procedures of the Authority adopted in accordance with this Convention; and
- (b) the terms of contracts concerning activities in the Area in matters relating to those contracts.

#### **Article 39. Enforcement of decisions of the Chamber**

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

**Article 40. Applicability of other sections of this Annex**

1. The other sections of this Annex which are not incompatible with this section apply to the Chamber.
2. In the exercise of its functions relating to advisory opinions, the Chamber shall be guided by the provisions of this Annex relating to procedure before the Tribunal to the extent to which it recognizes them to be applicable.

**Section 5  
Amendments****Article 41. Amendments**

1. Amendments to this Annex, other than amendments to section 4, may be adopted only in accordance with article 313 or by consensus at a conference convened in accordance with this Convention.
2. Amendments to section 4 may be adopted only in accordance with article 314.
3. The Tribunal may propose such amendments to this Statute as it may consider necessary, by written communications to the States Parties for their consideration in conformity with paragraphs 1 and 2.



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## **Annex VII Arbitration**

### **Article 1. Institution of proceedings**

Subject to the provisions of Part XV, any party to a dispute may submit the dispute to the arbitral procedure provided for in this Annex by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of the claim and the grounds on which it is based.

### **Article 2. List of arbitrators**

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

### **Article 3. Constitution of arbitral tribunal**

For the purpose of proceedings under this Annex, the arbitral tribunal shall, unless the parties otherwise agree, be constituted as follows:

- (a) Subject to subparagraph (g), the arbitral tribunal shall consist of five members.
- (b) The party instituting the proceedings shall appoint one member to be chosen preferably from the list referred to in article 2 of this Annex, who may be its national. The appointment shall be included in the notification referred to in article 1 of this Annex.
- (c) The other party to the dispute shall, within 30 days of receipt of the notification referred to in article 1 of this Annex, appoint one member to be chosen preferably from the list, who may be its national. If the appointment is not made within that period, the party instituting the proceedings may, within two weeks of the expiration of that period, request that the appointment be made in accordance with subparagraph (e).

- (d) The other three members shall be appointed by agreement between the parties. They shall be chosen preferably from the list and shall be nationals of third States unless the parties otherwise agree. The parties to the dispute shall appoint the President of the arbitral tribunal from among those three members. If, within 60 days of receipt of the notification referred to in article 1 of this Annex, the parties are unable to reach agreement on the appointment of one or more of the members of the tribunal to be appointed by agreement, or on the appointment of the President, the remaining appointment or appointments shall be made in accordance with subparagraph (e), at the request of a party to the dispute. Such request shall be made within two weeks of the expiration of the aforementioned 60-day period.
- (e) Unless the parties agree that any appointment under subparagraphs (c) and (d) be made by a person or a third State chosen by the parties, the President of the International Tribunal for the Law of the Sea shall make the necessary appointments. If the President is unable to act under this subparagraph or is a national of one of the parties to the dispute, the appointment shall be made by the next senior member of the International Tribunal for the Law of the Sea who is available and is not a national of one of the parties. The appointments referred to in this subparagraph shall be made from the list referred to in article 2 of this Annex within a period of 30 days of the receipt of the request and in consultation with the parties. The members so appointed shall be of different nationalities and may not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.
- (f) Any vacancy shall be filled in the manner prescribed for the initial appointment.
- (g) Parties in the same interest shall appoint one member of the tribunal jointly by agreement. Where there are several parties having separate interests or where there is disagreement as to whether they are of the same interest, each of them shall appoint one member of the tribunal. The number of members of the tribunal appointed separately by the parties shall always be smaller by one than the number of members of the tribunal to be appointed jointly by the parties.
- (h) In disputes involving more than two parties, the provisions of subparagraphs (a) to (f) shall apply to the maximum extent possible.

#### **Article 4. Functions of arbitral tribunal**

An arbitral tribunal constituted under article 3 of this Annex shall function in accordance with this Annex and the other provisions of this Convention.

**Article 5. Procedure**

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each party a full opportunity to be heard and to present its case.

**Article 6. Duties of parties to a dispute**

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, in accordance with their law and using all means at their disposal, shall:

- (a) provide it with all relevant documents, facilities and information; and
- (b) enable it when necessary to call witnesses or experts and receive their evidence and to visit the localities to which the case relates.

**Article 7. Expenses**

Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.

**Article 8. Required majority for decisions**

Decisions of the arbitral tribunal shall be taken by a majority vote of its members. The absence or abstention of less than half of the members shall not constitute a bar to the tribunal reaching a decision. In the event of an equality of votes, the President shall have a casting vote.

**Article 9. Default of appearance**

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

**Article 10. Award**

The award of the arbitral tribunal shall be confined to the subject-matter of the dispute and state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the award. Any member of the tribunal may attach a separate or dissenting opinion to the award.

**Article 11. Finality of award**

The award shall be final and without appeal, unless the parties to the dispute have agreed in advance to an appellate procedure. It shall be complied with by the parties to the dispute.

**Article 12. Interpretation or implementation of award**

1. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the award may be submitted by either party for decision to the arbitral tribunal which made the award. For this purpose, any vacancy in the tribunal shall be filled in the manner provided for in the original appointments of the members of the tribunal.
2. Any such controversy may be submitted to another court or tribunal under article 287 by agreement of all the parties to the dispute.

**Article 13. Application to entities other than States Parties**

The provisions of this Annex shall apply *mutatis mutandis* to any dispute involving entities other than States Parties.

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## **Annex VIII**

### **Special arbitration**

#### **Article 1. Institution of proceedings**

Subject to Part XV, any party to a dispute concerning the interpretation or application of the articles of this Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, or (4) navigation, including pollution from vessels and by dumping, may submit the dispute to the special arbitral procedure provided for in this Annex by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of the claim and the grounds on which it is based.

#### **Article 2. Lists of experts**

1. A list of experts shall be established and maintained in respect of each of the fields of (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping.
2. The lists of experts shall be drawn up and maintained, in the field of fisheries by the Food and Agriculture Organization of the United Nations, in the field of protection and preservation of the marine environment by the United Nations Environment Programme, in the field of marine scientific research by the Intergovernmental Oceanographic Commission, in the field of navigation, including pollution from vessels and by dumping, by the International Maritime Organization, or in each case by the appropriate subsidiary body concerned to which such organization, programme or commission has delegated this function.
3. Every State Party shall be entitled to nominate two experts in each field whose competence in the legal, scientific or technical aspects of such field is established and generally recognized and who enjoy the highest reputation for fairness and integrity. The names of the persons so nominated in each field shall constitute the appropriate list.
4. If at any time the experts nominated by a State Party in the list so constituted shall be fewer than two, that State Party shall be entitled to make further nominations as necessary.
5. The name of an expert shall remain on the list until withdrawn by the State Party which made the nomination, provided that such expert shall continue to serve on any special arbitral tribunal to which that expert has been appointed until the completion of the proceedings before that special arbitral tribunal.

### **Article 3. Constitution of special arbitral tribunal**

For the purpose of proceedings under this Annex, the special arbitral tribunal shall, unless the parties otherwise agree, be constituted as follows:

- (a) Subject to subparagraph (g), the special arbitral tribunal shall consist of five members.
- (b) The party instituting the proceedings shall appoint two members to be chosen preferably from the appropriate list or lists referred to in article 2 of this Annex relating to the matters in dispute, one of whom may be its national. The appointments shall be included in the notification referred to in article 1 of this Annex.
- (c) The other party to the dispute shall, within 30 days of receipt of the notification referred to in article 1 of this Annex, appoint two members to be chosen preferably from the appropriate list or lists relating to the matters in dispute, one of whom may be its national. If the appointments are not made within that period, the party instituting the proceedings may, within two weeks of the expiration of that period, request that the appointments be made in accordance with subparagraph (e).
- (d) The parties to the dispute shall by agreement appoint the President of the special arbitral tribunal, chosen preferably from the appropriate list, who shall be a national of a third State, unless the parties otherwise agree. If, within 30 days of receipt of the notification referred to in article 1 of this Annex, the parties are unable to reach agreement on the appointment of the President, the appointment shall be made in accordance with subparagraph (e), at the request of a party to the dispute. Such request shall be made within two weeks of the expiration of the aforementioned 30-day period.
- (e) Unless the parties agree that the appointment be made by a person or a third State chosen by the parties, the Secretary-General of the United Nations shall make the necessary appointments within 30 days of receipt of a request under subparagraphs (c) and (d). The appointments referred to in this subparagraph shall be made from the appropriate list or lists of experts referred to in article 2 of this Annex and in consultation with the parties to the dispute and the appropriate international organization. The members so appointed shall be of different nationalities and may not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.
- (f) Any vacancy shall be filled in the manner prescribed for the initial appointment.
- (g) Parties in the same interest shall appoint two members of the tribunal jointly by agreement. Where there are several parties having separate interests or where there is disagreement as to whether they are of the same interest, each of them shall appoint one member of the tribunal.
- (h) In disputes involving more than two parties, the provisions of subparagraphs (a) to (f) shall apply to the maximum extent possible.

**Article 4. General provisions**

Annex VII, articles 4 to 13, apply *mutatis mutandis* to the special arbitration proceedings in accordance with this Annex.

**Article 5. Fact finding**

1. The parties to a dispute concerning the interpretation or application of the provisions of this Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, or (4) navigation, including pollution from vessels and by dumping, may at any time agree to request a special arbitral tribunal constituted in accordance with article 3 of this Annex to carry out an inquiry and establish the facts giving rise to the dispute.
2. Unless the parties otherwise agree, the findings of fact of the special arbitral tribunal acting in accordance with paragraph 1, shall be considered as conclusive as between the parties.
3. If all the parties to the dispute so request, the special arbitral tribunal may formulate recommendations which, without having the force of a decision, shall only constitute the basis for a review by the parties of the questions giving rise to the dispute.
4. Subject to paragraph 2, the special arbitral tribunal shall act in accordance with the provisions of this Annex, unless the parties otherwise agree.

## **Annex IX**

### **Participation by international organizations**

#### **Article 1. Use of terms**

For the purposes of article 305 and of this Annex, “international organization” means an intergovernmental organization constituted by States to which its member States have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of those matters.

#### **Article 2. Signature**

An international organization may sign this Convention if a majority of its member States are signatories of this Convention. At the time of signature an international organization shall make a declaration specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States which are signatories, and the nature and extent of that competence.

#### **Article 3. Formal confirmation and accession**

1. An international organization may deposit its instrument of formal confirmation or of accession if a majority of its member States deposit or have deposited their instruments of ratification or accession.
2. The instruments deposited by the international organization shall contain the undertakings and declarations required by articles 4 and 5 of this Annex.

#### **Article 4. Extent of participation and rights and obligations**

1. The instrument of formal confirmation or of accession of an international organization shall contain an undertaking to accept the rights and obligations of States under this Convention in respect of matters relating to which competence has been transferred to it by its member States which are Parties to this Convention.
2. An international organization shall be a Party to this Convention to the extent that it has competence in accordance with the declarations, communications of information or notifications referred to in article 5 of this Annex.
3. Such an international organization shall exercise the rights and perform the obligations which its member States which are Parties would otherwise have under this Convention, on matters relating to which competence has been transferred to it by those member States. The member States of that international organization shall not exercise competence which they have transferred to it.
4. Participation of such an international organization shall in no case entail an increase of the representation to which its member States which are States Parties would otherwise be entitled, including rights in decision-making.



5. Participation of such an international organization shall in no case confer any rights under this Convention on member States of the organization which are not States Parties to this Convention.
6. In the event of a conflict between the obligations of an international organization under this Convention and its obligations under the agreement establishing the organization or any acts relating to it, the obligations under this Convention shall prevail.

#### **Article 5. Declarations, notifications and communications**

1. The instrument of formal confirmation or of accession of an international organization shall contain a declaration specifying the matters governed by this Convention in respect of which competence has been transferred to the organization by its member States which are Parties to this Convention.
2. A member State of an international organization shall, at the time it ratifies or accedes to this Convention or at the time when the organization deposits its instrument of formal confirmation or of accession, whichever is later, make a declaration specifying the matters governed by this Convention in respect of which it has transferred competence to the organization.
3. States Parties which are member States of an international organization which is a Party to this Convention shall be presumed to have competence over all matters governed by this Convention in respect of which transfers of competence to the organization have not been specifically declared, notified or communicated by those States under this article.
4. The international organization and its member States which are States Parties shall promptly notify the depositary of this Convention of any changes to the distribution of competence, including new transfers of competence, specified in the declarations under paragraphs 1 and 2.
5. Any State Party may request an international organization and its member States which are States Parties to provide information as to which, as between the organization and its member States, has competence in respect of any specific question which has arisen. The organization and the member States concerned shall provide this information within a reasonable time. The international organization and the member States may also, on their own initiative, provide this information.
6. Declarations, notifications and communications of information under this article shall specify the nature and extent of the competence transferred.

**Article 6. Responsibility and liability**

1. Parties which have competence under article 5 of this Annex shall have responsibility for failure to comply with obligations or for any other violation of this Convention.
2. Any State Party may request an international organization or its member States which are States Parties for information as to who has responsibility in respect of any specific matter. The organization and the member States concerned shall provide this information. Failure to provide this information within a reasonable time or the provision of contradictory information shall result in joint and several liability.

**Article 7. Settlement of disputes**

1. At the time of deposit of its instrument of formal confirmation or of accession, or at any time thereafter, an international organization shall be free to choose, by means of a written declaration, one or more of the means for the settlement of disputes concerning the interpretation or application of this Convention, referred to in article 287, paragraph 1(a), (c) or (d).
2. Part XV applies *mutatis mutandis* to any dispute between Parties to this Convention, one or more of which are international organizations.
3. When an international organization and one or more of its member States are joint parties to a dispute, or parties in the same interest, the organization shall be deemed to have accepted the same procedures for the settlement of disputes as the member States; when, however, a member State has chosen only the International Court of Justice under article 287, the organization and the member State concerned shall be deemed to have accepted arbitration in accordance with Annex VII, unless the parties to the dispute otherwise agree.

**Article 8. Applicability of Part XVII**

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

- (a) the instrument of formal confirmation or of accession of an international organization shall not be taken into account in the application of article 308, paragraph 1;
- (b) (i) an international organization shall have exclusive capacity with respect to the application of articles 312 to 315, to the extent that it has competence under article 5 of this Annex over the entire subject-matter of the amendment;
- (ii) the instrument of formal confirmation or of accession of an international organization to an amendment, the entire subject-matter over which the international organization has competence under article 5 of this Annex, shall be

considered to be the instrument of ratification or accession of each of the member States which are States Parties, for the purposes of applying article 316, paragraphs 1, 2 and 3;

- (iii) the instrument of formal confirmation or of accession of the international organization shall not be taken into account in the application of article 316, paragraphs 1 and 2, with regard to all other amendments;
- (c) (i) an international organization may not denounce this Convention in accordance with article 317 if any of its member States is a State Party and if it continues to fulfil the qualifications specified in article 1 of this Annex;
- (ii) an international organization shall denounce this Convention when none of its member States is a State Party or if the international organization no longer fulfils the qualifications specified in article 1 of this Annex. Such denunciation shall take effect immediately.

## **Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982**

### *The States Parties to this Agreement*

*Recognizing* the important contribution of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as “the Convention”) to the maintenance of peace, justice and progress for all peoples of the world,

*Reaffirming* that the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as “the Area”), as well as the resources of the Area, are the common heritage of mankind,

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

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

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

*Wishing* to facilitate universal participation in the Convention,

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

*Have agreed* as follows:

### **Article 1. Implementation of Part XI**

1. The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.
2. The Annex forms an integral part of this Agreement.

### **Article 2. Relationship between this Agreement and Part XI**

1. The provisions of this Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail.
2. Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.

### **Article 3. Signature**

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

### **Article 4. Consent to be bound**

1. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall also represent consent to be bound by this Agreement.
2. No State or entity may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention.
3. A State or entity referred to in article 3 may express its consent to be bound by this Agreement by:
  - (a) Signature not subject to ratification, formal confirmation or the procedure set out in article 5;
  - (b) Signature subject to ratification or formal confirmation, followed by ratification or formal confirmation;
  - (c) Signature subject to the procedure set out in article 5; or
  - (d) Accession.
4. Formal confirmation by the entities referred to in article 305, paragraph 1(f), of the Convention shall be in accordance with Annex IX of the Convention.
5. The instruments of ratification, formal confirmation or accession shall be deposited with the Secretary-General of the United Nations.

### **Article 5. Simplified procedure**

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

**Article 6. Entry into force**

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

**Article 7. Provisional application**

1. If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force by:
  - (a) States which have consented to its adoption in the General Assembly of the United Nations, except any such State which before 16 November 1994 notifies the depositary in writing either that it will not so apply this Agreement or that it will consent to such application only upon subsequent signature or notification in writing;
  - (b) States and entities which sign this Agreement, except any such State or entity which notifies the depositary in writing at the time of signature that it will not so apply this Agreement;
  - (c) States and entities which consent to its provisional application by so notifying the depositary in writing;
  - (d) States which accede to this Agreement.
2. All such States and entities shall apply this Agreement provisionally in accordance with their national or internal laws and regulations, with effect from 16 November 1994 or the date of signature, notification of consent or accession, if later.
3. Provisional application shall terminate upon the date of entry into force of this Agreement. In any event, provisional application shall terminate on 16 November 1998 if at that date the requirement in article 6, paragraph 1, of consent to be bound by this Agreement by at least seven of the States (of which at least five must be developed States) referred to in paragraph 1(a) of resolution II has not been fulfilled.

### **Article 8. States Parties**

1. For the purposes of this Agreement, “States Parties” means States which have consented to be bound by this Agreement and for which this Agreement is in force.
2. This Agreement applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1(c), (d), (e) and (f), of the Convention which become Parties to this Agreement in accordance with the conditions relevant to each, and to that extent “States Parties” refers to those entities.

### **Article 9. Depositary**

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

### **Article 10. Authentic texts**

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

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

DONE AT NEW YORK, this twenty-eighth day of July, one thousand nine hundred and ninety-four.

## **Annex**

### **Section 1. Costs to States Parties and institutional arrangements**

1. The International Seabed Authority (hereinafter referred to as “the Authority”) is the organization through which States Parties to the Convention shall, in accordance with the regime for the Area established in Part XI and this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention. The Authority shall have such incidental powers, consistent with the Convention, as are implicit in, and necessary for, the exercise of those powers and functions with respect to activities in the Area.
2. In order to minimize costs to States Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, duration and scheduling of meetings.
3. The setting up and the functioning of the organs and subsidiary bodies of the Authority shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they

may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.

4. The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Secretariat, the Legal and Technical Commission and the Finance Committee. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.
5. Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:
  - (a) Processing of applications for approval of plans of work for exploration in accordance with Part XI and this Agreement;
  - (b) Implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as “the Preparatory Commission”) relating to the registered pioneer investors and their certifying States, including their rights and obligations, in accordance with article 308, paragraph 5, of the Convention and resolution II, paragraph 13;
  - (c) Monitoring of compliance with plans of work for exploration approved in the form of contracts;
  - (d) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;
  - (e) Study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;
  - (f) Adoption of rules, regulations and procedures necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, article 17, paragraph 2(b) and (c), of the Convention, such rules, regulations and procedures shall take into account the terms of this Agreement, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;
  - (g) Adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment;
  - (h) Promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular



emphasis on research related to the environmental impact of activities in the Area;

- (i) Acquisition of scientific knowledge and monitoring of the development of marine technology relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;
  - (j) Assessment of available data relating to prospecting and exploration;
  - (k) Timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment.
6. (a) An application for approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including Annex III thereof, and this Agreement, and subject to the following:
- (i) A plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in resolution II, paragraph 1(a)(ii) or (iii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to the entry into force of the Convention, or its successor in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work if the sponsoring State or States certify that the applicant has expended an amount equivalent to at least US\$ 30 million in research and exploration activities and has expended no less than 10 per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract. The provisions of section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;
  - (ii) Notwithstanding the provisions of resolution II, paragraph 8(a), a registered pioneer investor may request approval of a plan of work for exploration within 36 months of the entry into force of the Convention. The plan of work for exploration shall consist of documents, reports and other data submitted to the Preparatory Commission both before and after registration and shall be accompanied by a certificate of compliance, consisting of a factual report describing the status of fulfilment of obligations under the pioneer investor regime, issued by the Preparatory Commission in accordance with resolution II, paragraph 11(a). Such a plan of work shall be considered to be approved. Such an approved plan of work shall be in the form of a contract concluded between the Authority and the registered

pioneer investor in accordance with Part XI and this Agreement. The fee of US\$ 250,000 paid pursuant to resolution II, paragraph 7(a), shall be deemed to be the fee relating to the exploration phase pursuant to section 8, paragraph 3, of this Annex. Section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

- (iii) In accordance with the principle of non-discrimination, a contract with a State or entity or any component of such entity referred to in subparagraph (a)(i) shall include arrangements which shall be similar to and no less favourable than those agreed with any registered pioneer investor referred to in subparagraph (a)(ii). If any of the States or entities or any components of such entities referred to in subparagraph (a)(i) are granted more favourable arrangements, the Council shall make similar and no less favourable arrangements with regard to the rights and obligations assumed by the registered pioneer investors referred to in subparagraph (a)(ii), provided that such arrangements do not affect or prejudice the interests of the Authority;
  - (iv) A State sponsoring an application for a plan of work pursuant to the provisions of subparagraph (a)(i) or (ii) may be a State Party or a State which is applying this Agreement provisionally in accordance with article 7, or a State which is a member of the Authority on a provisional basis in accordance with paragraph 12;
  - (v) Resolution II, paragraph 8(c), shall be interpreted and applied in accordance with subparagraph (a)(iv).
- (b) The approval of a plan of work for exploration shall be in accordance with article 153, paragraph 3, of the Convention.
7. An application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures adopted by the Authority.
  8. An application for approval of a plan of work for exploration, subject to paragraph 6(a)(i) or (ii), shall be processed in accordance with the procedures set out in section 3, paragraph 11, of this Annex.
  9. A plan of work for exploration shall be approved for a period of 15 years. Upon the expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so or has obtained an extension for the plan of work for exploration. Contractors may apply for such extensions for periods of not more than five years each. Such extensions shall be approved if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control

has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

10. Designation of a reserved area for the Authority in accordance with Annex III, article 8, of the Convention shall take place in connection with approval of an application for a plan of work for exploration or approval of an application for a plan of work for exploration and exploitation.
11. Notwithstanding the provisions of paragraph 9, an approved plan of work for exploration which is sponsored by at least one State provisionally applying this Agreement shall terminate if such a State ceases to apply this Agreement provisionally and has not become a member on a provisional basis in accordance with paragraph 12 or has not become a State Party.
12. Upon the entry into force of this Agreement, States and entities referred to in article 3 of this Agreement which have been applying it provisionally in accordance with article 7 and for which it is not in force may continue to be members of the Authority on a provisional basis pending its entry into force for such States and entities, in accordance with the following subparagraphs:
  - (a) If this Agreement enters into force before 16 November 1996, such States and entities shall be entitled to continue to participate as members of the Authority on a provisional basis upon notification to the depositary of the Agreement by such a State or entity of its intention to participate as a member on a provisional basis. Such membership shall terminate either on 16 November 1996 or upon the entry into force of this Agreement and the Convention for such member, whichever is earlier. The Council may, upon the request of the State or entity concerned, extend such membership beyond 16 November 1996 for a further period or periods not exceeding a total of two years provided that the Council is satisfied that the State or entity concerned has been making efforts in good faith to become a party to the Agreement and the Convention;
  - (b) If this Agreement enters into force after 15 November 1996, such States and entities may request the Council to grant continued membership in the Authority on a provisional basis for a period or periods not extending beyond 16 November 1998. The Council shall grant such membership with effect from the date of the request if it is satisfied that the State or entity has been making efforts in good faith to become a party to the Agreement and the Convention;
  - (c) States and entities which are members of the Authority on a provisional basis in accordance with subparagraph (a) or (b) shall apply the terms of Part XI and this Agreement in accordance with their national or internal laws, regulations and annual budgetary appropriations and shall have the same rights and obligations as other members, including:

- (i) The obligation to contribute to the administrative budget of the Authority in accordance with the scale of assessed contributions;
  - (ii) The right to sponsor an application for approval of a plan of work for exploration. In the case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan of work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are States Parties or members on a provisional basis;
- (d) Notwithstanding the provisions of paragraph 9, an approved plan of work in the form of a contract for exploration which was sponsored pursuant to subparagraph (c)(ii) by a State which was a member on a provisional basis shall terminate if such membership ceases and the State or entity has not become a State Party;
- (e) If such a member has failed to make its assessed contributions or otherwise failed to comply with its obligations in accordance with this paragraph, its membership on a provisional basis shall be terminated.
13. The reference in Annex III, article 10, of the Convention to performance which has not been satisfactory shall be interpreted to mean that the contractor has failed to comply with the requirements of an approved plan of work in spite of a written warning or warnings from the Authority to the contractor to comply therewith.
14. The Authority shall have its own budget. Until the end of the year following the year during which this Agreement enters into force, the administrative expenses of the Authority shall be met through the budget of the United Nations. Thereafter, the administrative expenses of the Authority shall be met by assessed contributions of its members, including any members on a provisional basis, in accordance with articles 171, subparagraph (a), and 173 of the Convention and this Agreement, until the Authority has sufficient funds from other sources to meet those expenses. The Authority shall not exercise the power referred to in article 174, paragraph 1, of the Convention to borrow funds to finance its administrative budget.
15. The Authority shall elaborate and adopt, in accordance with article 162, paragraph 2(o)(ii), of the Convention, rules, regulations and procedures based on the principles contained in sections 2, 5, 6, 7 and 8 of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, in accordance with the following subparagraphs:
- (a) The Council may undertake such elaboration any time it deems that all or any of such rules, regulations or procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State whose national intends to apply for approval of a plan of work for exploitation;

- (b) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with article 162, paragraph 2(o), of the Convention, complete the adoption of such rules, regulations and procedures within two years of the request;
  - (c) If the Council has not completed the elaboration of the rules, regulations and procedures relating to exploitation within the prescribed time and an application for approval of a plan of work for exploitation is pending, it shall none the less consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors.
16. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the reports and recommendations of the Preparatory Commission, shall be taken into account by the Authority in the adoption of rules, regulations and procedures in accordance with Part XI and this Agreement.
17. The relevant provisions of Part XI, section 4, of the Convention shall be interpreted and applied in accordance with this Agreement.

## **Section 2. The Enterprise**

1. The Secretariat of the Authority shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. The Secretary-General of the Authority shall appoint from within the staff of the Authority an interim Director-General to oversee the performance of these functions by the Secretariat.
- These functions shall be:
- (a) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;
  - (b) Assessment of the results of the conduct of marine scientific research with respect to activities in the Area, with particular emphasis on research related to the environmental impact of activities in the Area;
  - (c) Assessment of available data relating to prospecting and exploration, including the criteria for such activities;
  - (d) Assessment of technological developments relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;
  - (e) Evaluation of information and data relating to areas reserved for the Authority;

- (f) Assessment of approaches to joint-venture operations;
  - (g) Collection of information on the availability of trained manpower;
  - (h) Study of managerial policy options for the administration of the Enterprise at different stages of its operations.
2. The Enterprise shall conduct its initial deep seabed mining operations through joint ventures. Upon the approval of a plan of work for exploitation for an entity other than the Enterprise, or upon receipt by the Council of an application for a joint-venture operation with the Enterprise, the Council shall take up the issue of the functioning of the Enterprise independently of the Secretariat of the Authority. If joint-venture operations with the Enterprise accord with sound commercial principles, the Council shall issue a directive pursuant to article 170, paragraph 2, of the Convention providing for such independent functioning.
  3. The obligation of States Parties to fund one mine site of the Enterprise as provided for in Annex IV, article 11, paragraph 3, of the Convention shall not apply and States Parties shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint-venture arrangements.
  4. The obligations applicable to contractors shall apply to the Enterprise. Notwithstanding the provisions of article 153, paragraph 3, and Annex III, article 3, paragraph 5, of the Convention, a plan of work for the Enterprise upon its approval shall be in the form of a contract concluded between the Authority and the Enterprise.
  5. A contractor which has contributed a particular area to the Authority as a reserved area has the right of first refusal to enter into a joint-venture arrangement with the Enterprise for exploration and exploitation of that area. If the Enterprise does not submit an application for a plan of work for activities in respect of such a reserved area within 15 years of the commencement of its functions independent of the Secretariat of the Authority or within 15 years of the date on which that area is reserved for the Authority, whichever is the later, the contractor which contributed the area shall be entitled to apply for a plan of work for that area provided it offers in good faith to include the Enterprise as a joint-venture partner.
  6. Article 170, paragraph 4, Annex IV and other provisions of the Convention relating to the Enterprise shall be interpreted and applied in accordance with this section.

### **Section 3. Decision-making**

1. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.
2. As a general rule, decision-making in the organs of the Authority should be by consensus.

3. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Assembly on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance shall be taken by a two-thirds majority of members present and voting, as provided for in article 159, paragraph 8, of the Convention.
4. Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.
5. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to in paragraph 9. In taking decisions the Council shall seek to promote the interests of all the members of the Authority.
6. The Council may defer the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.
7. Decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee.
8. The provisions of article 161, paragraph 8(b) and (c), of the Convention shall not apply.
9. (a) Each group of States elected under paragraph 15(a) to (c) shall be treated as a chamber for the purposes of voting in the Council. The developing States elected under paragraph 15(d) and (e) shall be treated as a single chamber for the purposes of voting in the Council.  
(b) Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for membership in the groups of States in paragraph 15(a) to (d). If a State fulfils the criteria for membership in more than one group, it may only be proposed by one group for election to the Council and it shall represent only that group in voting in the Council.
10. Each group of States in paragraph 15(a) to (d) shall be represented in the Council by those members nominated by that group. Each group shall nominate only as many candidates as the number of seats required to be filled by that group. When the number of potential candidates in each of the groups referred to in paragraph 15(a)

to (e) exceeds the number of seats available in each of those respective groups, as a general rule, the principle of rotation shall apply. States members of each of those groups shall determine how this principle shall apply in those groups.

11. (a) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its rules of procedure for decision-making on questions of substance.  
(b) The provisions of article 162, paragraph 2(j), of the Convention shall not apply.
12. Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement procedures set out in the Convention.
13. Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.
14. Part XI, section 4, subsections B and C, of the Convention shall be interpreted and applied in accordance with this section.
15. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:
  - (a) Four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this group;
  - (b) Four members from among the eight States Parties which have made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals;
  - (c) Four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories



of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

- (d) Six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States;
- (e) Eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and the Caribbean and Western Europe and Others.

16. The provisions of article 161, paragraph 1, of the Convention shall not apply.

#### **Section 4. Review Conference**

The provisions relating to the Review Conference in article 155, paragraphs 1, 3 and 4, of the Convention shall not apply. Notwithstanding the provisions of article 314, paragraph 2, of the Convention, the Assembly, on the recommendation of the Council, may undertake at any time a review of the matters referred to in article 155, paragraph 1, of the Convention. Amendments relating to this Agreement and Part XI shall be subject to the procedures contained in articles 314, 315 and 316 of the Convention, provided that the principles, regime and other terms referred to in article 155, paragraph 2, of the Convention shall be maintained and the rights referred to in paragraph 5 of that article shall not be affected.

#### **Section 5. Transfer of technology**

1. In addition to the provisions of article 144 of the Convention, transfer of technology for the purposes of Part XI shall be governed by the following principles:
  - (a) The Enterprise, and developing States wishing to obtain deep seabed mining technology, shall seek to obtain such technology on fair and reasonable commercial terms and conditions on the open market, or through joint-venture arrangements;
  - (b) If the Enterprise or developing States are unable to obtain deep seabed mining technology, the Authority may request all or any of the contractors and their respective sponsoring State or States to cooperate with it in facilitating the acquisition of deep seabed mining technology by the Enterprise or its joint

- venture, or by a developing State or States seeking to acquire such technology on fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also cooperate fully with the Authority;
- (c) As a general rule, States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes in marine science and technology and the protection and preservation of the marine environment.
2. The provisions of Annex III, article 5, of the Convention shall not apply.

### **Section 6. Production policy**

1. The production policy of the Authority shall be based on the following principles:
- (a) Development of the resources of the Area shall take place in accordance with sound commercial principles;
- (b) The provisions of the General Agreement on Tariffs and Trade, its relevant codes and successor or superseding agreements shall apply with respect to activities in the Area;
- (c) In particular, there shall be no subsidization of activities in the Area except as may be permitted under the agreements referred to in subparagraph (b). Subsidization for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (b);
- (d) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular:
- (i) By the use of tariff or non-tariff barriers; and
- (ii) Given by States Parties to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;
- (e) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under the plan of work;
- (f) The following shall apply to the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (b):

- (i) Where the States Parties concerned are parties to such agreements, they shall have recourse to the dispute settlement procedures of those agreements;
  - (ii) Where one or more of the States Parties concerned are not parties to such agreements, they shall have recourse to the dispute settlement procedures set out in the Convention;
  - (g) In circumstances where a determination is made under the agreements referred to in subparagraph (b) that a State Party has engaged in subsidization which is prohibited or has resulted in adverse effects on the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.
2. The principles contained in paragraph 1 shall not affect the rights and obligations under any provision of the agreements referred to in paragraph 1(b), as well as the relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.
  3. The acceptance by a contractor of subsidies other than those which may be permitted under the agreements referred to in paragraph 1(b) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.
  4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraphs 1(b) to (d) or 3 may initiate dispute settlement procedures in conformity with paragraph 1(f) or (g).
  5. A State Party may at any time bring to the attention of the Council activities which in its view are inconsistent with the requirements of paragraph 1(b) to (d).
  6. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this section, including relevant rules, regulations and procedures governing the approval of plans of work.
  7. The provisions of article 151, paragraphs 1 to 7 and 9, article 162, paragraph 2(q), article 165, paragraph 2(n), and Annex III, article 6, paragraph 5, and article 7, of the Convention shall not apply.

### **Section 7. Economic Assistance**

1. The policy of the Authority of assisting developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:

- (a) The Authority shall establish an economic assistance fund from a portion of the funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. The amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions shall be used for the establishment of the economic assistance fund;
  - (b) Developing land-based producer States whose economies have been determined to be seriously affected by the production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority;
  - (c) The Authority shall provide assistance from the fund to affected developing land-based producer States, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes;
  - (d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer States.
2. Article 151, paragraph 10, of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2(l), article 162, paragraph 2(n), article 164, paragraph 2(d), article 171, subparagraph (f), and article 173, paragraph 2(c), of the Convention shall be interpreted accordingly

### **Section 8. Financial terms of contracts**

1. The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contracts:
  - (a) The system of payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system;
  - (b) The rates of payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;
  - (c) The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon, the contractor has the right to choose the system applicable to its contract. Any subsequent

change in choice between alternative systems, however, shall be made by agreement between the Authority and the contractor;

- (d) An annual fixed fee shall be payable from the date of commencement of commercial production. This fee may be credited against other payments due under the system adopted in accordance with subparagraph (c). The amount of the fee shall be established by the Council;
  - (e) The system of payments may be revised periodically in the light of changing circumstances. Any changes shall be applied in a non-discriminatory manner. Such changes may apply to existing contracts only at the election of the contractor. Any subsequent change in choice between alternative systems shall be made by agreement between the Authority and the contractor;
  - (f) Disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures set out in the Convention.
2. The provisions of Annex III, article 13, paragraphs 3 to 10, of the Convention shall not apply.
  3. With regard to the implementation of Annex III, article 13, paragraph 2, of the Convention, the fee for processing applications for approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be US\$ 250,000.

### **Section 9. The Finance Committee**

1. There is hereby established a Finance Committee. The Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity.
2. No two members of the Finance Committee shall be nationals of the same State Party.
3. Members of the Finance Committee shall be elected by the Assembly and due account shall be taken of the need for equitable geographical distribution and the representation of special interests. Each group of States referred to in section 3, paragraph 15(a), (b), (c) and (d), of this Annex shall be represented on the Committee by at least one member. Until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses, the membership of the Committee shall include representatives of the five largest financial contributors to the administrative budget of the Authority. Thereafter, the election of one member from each group shall be on the basis of nomination by the members of the respective group, without prejudice to the possibility of further members being elected from each group.

4. Members of the Finance Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.
5. In the event of the death, incapacity or resignation of a member of the Finance Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or group of States.
6. Members of the Finance Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.
7. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:
  - (a) Draft financial rules, regulations and procedures of the organs of the Authority and the financial management and internal financial administration of the Authority;
  - (b) Assessment of contributions of members to the administrative budget of the Authority in accordance with article 160, paragraph 2(e), of the Convention;
  - (c) All relevant financial matters, including the proposed annual budget prepared by the Secretary-General of the Authority in accordance with article 172 of the Convention and the financial aspects of the implementation of the programmes of work of the Secretariat;
  - (d) The administrative budget;
  - (e) Financial obligations of States Parties arising from the implementation of this Agreement and Part XI as well as the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority;
  - (f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.
8. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus.
9. The requirement of article 162, paragraph 2(y), of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this section.

# Declaration respecting Maritime Law 1856

The Plenipotentiaries who signed the Treaty of Paris of the thirtieth of March, one thousand eight hundred and fifty-six, assembled in Conference, –

Considering:

That maritime law, in time of war, has long been the subject of deplorable disputes;

That the uncertainty of the law and of the duties in such a matter, gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts;

That it is consequently advantageous to establish a uniform doctrine on so important a point;

That the Plenipotentiaries assembled in Congress at Paris cannot better respond to the intentions by which their Governments are animated, than by seeking to introduce into international relations fixed principles in this respect;

The above-mentioned Plenipotentiaries, being duly authorized, resolved to concert among themselves as to the means of attaining this object; and, having come to an agreement, have adopted the following solemn Declaration:

1. Privateering is, and remains, abolished;
2. The neutral flag covers enemy's goods, with the exception of contraband of war;
3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag;
4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

The Governments of the undersigned Plenipotentiaries engage to bring the present Declaration to the knowledge of the States which have not taken part in the Congress of Paris, and to invite them to accede to it.

Convinced that the maxims which they now proclaim cannot but be received with gratitude by the whole world, the undersigned Plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof, will be crowned with full success.

The present Declaration is not and shall not be binding, except between those Powers who have acceded, or shall accede, to it.

DONE AT PARIS, the sixteenth of April, one thousand eight hundred and fifty-six.

(Here follow signatures)



# Declaration concernig the Law of Naval War 1909 (London Declaration)

(List of Contracting Parties)

Having regard to the terms in which the British Government invited various Powers to meet in conference in order to arrive at an agreement as to what are the generally recognized rules of international law within the meaning of Article 7 of the Convention of 18 October 1907, relative to the establishment of an International Prize Court;

Recognizing all the advantages which an agreement as to the said rules would, in the unfortunate event of a naval war, present, both as regards peaceful commerce, and as regards the belligerents and their diplomatic relations with neutral Governments;

Having regard to the divergence often found in the methods by which it is sought to apply in practice the general principles of international law;

Animated by the desire to ensure henceforward a greater measure of uniformity in this respect; Hoping that a work so important to the common welfare will meet with general approval;

Have appointed as their Plenipotentiaries, that is to say:

(Here follow the names of Plenipotentiaries)

Who, after having communicated their full powers, found to be in good and due form, have agreed to make the present Declaration:

## **Preliminary provision**

The Signatory Powers are agreed that the rules contained in the following Chapters correspond in substance with the generally recognized principles of international law.

## Chapter I – Blockade in time of war

### Art. 1

A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

### Art. 2

In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding, must be effective – that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline.

### Art. 3

The question whether a blockade is effective is a question of fact.

### Art. 4

A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

### Art. 5

A blockade must be applied impartially to the ships of all nations.

### Art. 6

The commander of a blockading force may give permission to a warship to enter, and subsequently to leave, a blockaded port.

### Art. 7

In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

### Art. 8

A blockade, in order to be binding, must be declared in accordance with Article 9, and notified in accordance with Articles 11 and 16.

**Art. 9**

A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name.

It specifies –

- (1) The date when the blockade begins;
- (2) the geographical limits of the coastline under blockade;
- (3) the period within which neutral vessels may come out.

**Art. 10**

If the operations of the blockading Power, or of the naval authorities acting in its name, do not tally with the particulars, which, in accordance with Article 9(1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

**Art. 11**

A declaration of blockade is notified

- (1) To neutral Powers, by the blockading Power, by means of a communication addressed to the Governments direct, or to their representatives accredited to it;
- (2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coastline under blockade as soon as possible.

**Art. 12**

The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised.

**Art. 13**

The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by Article 11.

**Art. 14**

The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

**Art. 15**

Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time.

**Art. 16**

If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's logbook, and must state the day and hour, and the geographical position of the vessel at the time.

If through the negligence of the officer commanding the blockading force no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

**Art. 17**

Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective.

**Art. 18**

The blockading forces must not bar access to neutral ports or coasts.

**Art. 19**

Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port.

**Art. 20**

A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

**Art. 21**

A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

## Chapter II – Contraband of war

### Art. 22

The following articles may, without notice, be treated as contraband of war, under the name of absolute contraband:

- (1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
- (2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
- (3) Powder and explosives specially prepared for use in war.
- (4) Gun-mountings, limber boxes, limbers, military waggons, field forges, and their distinctive component parts.
- (5) Clothing and equipment of a distinctively military character.
- (6) All kinds of harness of a distinctively military character.
- (7) Saddle, draught, and pack animals suitable for use in war.
- (8) Articles of camp equipment, and their distinctive component parts.
- (9) Armour plates.
- (10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.
- (11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

### Art. 23

Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

### Art. 24

The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband:

- (1) Foodstuffs.
- (2) Forage and grain, suitable for feeding animals.
- (3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
- (4) Gold and silver in coin or bullion; paper money.
- (5) Vehicles of all kinds available for use in war, and their component parts.
- (6) Vessels, craft, and boats of all kinds; floating docks, parts of docks and their component parts.
- (7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.
- (8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.
- (9) Fuel; lubricants.
- (10) Powder and explosives not specially prepared for use in war.
- (11) Barbed wire and implements for fixing and cutting the same.
- (12) Horseshoes and shoeing materials.
- (13) Harness and saddlery.
- (14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

**Art. 25**

Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

**Art. 26**

If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Articles 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

**Art. 27**

Articles which are not susceptible of use in war may not be declared contraband of war.

**Art. 28**

The following may not be declared contraband of war:

- (1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.
- (2) Oil seeds and nuts; copra.
- (3) Rubber, resins, gums, and lacs; hops.
- (4) Raw hides and horns, bones, and ivory.
- (5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
- (6) Metallic ores.
- (7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
- (8) Chinaware and glass.
- (9) Paper and paper-making materials.
- (10) Soap, paint and colours, including articles exclusively used in their manufacture, and varnish.
- (11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
- (12) Agricultural, mining, textile, and printing machinery.
- (13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.
- (14) Clocks and watches, other than chronometers.
- (15) Fashion and fancy goods.
- (16) Feathers of all kinds, hairs, and bristles.
- (17) Articles of household furniture and decoration; office furniture and requisites.

**Art. 29**

Likewise the following may not be treated as contraband of war:

- (1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.
- (2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

**Art. 30**

Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transshipment or a subsequent transport by land.

**Art. 31**

Proof of the destination specified in Article 30 is complete in the following cases:

- (1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.
- (2) When the vessel is to call at enemy ports only, or when she is to touch at a enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

**Art. 32**

Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

**Art. 33**

Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

**Art. 34**

The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this Article may be rebutted.



**Art. 35**

Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

**Art. 36**

Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.

**Art. 37**

A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

**Art. 38**

A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

**Art. 39**

Contraband goods are liable to condemnation.

**Art. 40**

A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

**Art. 41**

If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings.

**Art. 42**

Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

**Art. 43**

If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

**Art. 44**

A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship. The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

### Chapter III – Unneutral service

**Art. 45**

A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband:

- (1) If she is on a voyage especially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy.
- (2) If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation.

The provisions of the present Article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the Power to which such port belongs, provided that such notification was made in sufficient time.

#### **Art. 46**

A neutral vessel will be condemned and, in a general way, receive the same treatment as would be applicable to her if she were an enemy merchant vessel:

- (1) if she takes a direct part in the hostilities;
- (2) if she is under the orders or control of an agent placed on board by the enemy Government;
- (3) if she is in the exclusive employment of the enemy Government;
- (4) if she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

In the cases covered by the present Article, goods belonging to the owner of the vessel are likewise liable to condemnation.

#### **Art. 47**

Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel

## **Chapter IV – Destruction of neutral prizes**

#### **Art. 48**

A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

**Art. 49**

As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

**Art. 50**

Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.

**Art. 51**

A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Article 49. If he fails to do this, he must compensate the parties interested and no examination shall be made of the question whether the capture was valid or not.

**Art. 52**

If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested, in place of the restitution to which they would have been entitled.

**Art. 53**

If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

**Art. 54**

The captor has the right to demand the handing over, or to proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under Article 49, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the log-book of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed, and the formalities duly carried out, the master must be allowed to continue his voyage.

The provisions of Articles 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

## **Chapter V – Transfer to a neutral flag**

### **Art. 55**

The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages.

### **Art. 56**

The transfer of an enemy vessel to a neutral flag, effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

There, however, is an absolute presumption that a transfer is void –

- (1) If the transfer has been made during a voyage or in a blockaded port.
- (2) If a right to repurchase or recover the vessel is reserved to the vendor.
- (3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing, have not been fulfilled,

## **Chapter VI – Enemy character**

### **Art. 57**

Subject to the provisions respecting transfer to another flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly.

The case where a neutral vessel is engaged in a trade which is closed in time of peace, remains outside the scope of, and is in no wise affected by, this rule.

**Art. 58**

The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.

**Art. 59**

In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods.

**Art. 60**

Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded. If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character.

## Chapter VII – Convoy

**Art. 61**

Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained by search.

**Art. 62**

If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

## Chapter VIII – Resistance to search

**Art. 63**

Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture, involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.

## Chapter IX – Compensation

### Art. 64

If the capture of a vessel or of goods is not upheld by the prize court, or if the prize is released without any judgement being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods.

## Final provisions

### Art. 65

The provisions of the present Declaration must be treated as a whole, and cannot be separated.

### Art. 66

The Signatory Powers undertake to insure the mutual observance of the rules contained in the present Declaration in any war in which all the belligerents are parties thereto. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

### Art. 67

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited in London. The first deposit of ratifications shall be recorded in a Protocol signed by the representatives of the Powers taking part therein, and by His Britannic Majesty's Principal Secretary of State for Foreign Affairs. The subsequent deposits of ratifications shall be made by means of a written notification addressed to the British Government, and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications and of the notifications mentioned in the preceding paragraph as well as of the instruments of ratification which accompany them, shall be immediately sent by the British Government, through the diplomatic channel, to the Signatory Powers. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

### Art. 68

The present Declaration shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently, sixty

days after the notification of their ratification shall have been received by the British Government.

**Art. 69**

In the event of one of the Signatory Powers wishing to denounce the present Declaration, such denunciation can only be made to take effect at the end of a period of twelve years, beginning sixty days after the first deposit of ratifications, and, after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years. Such denunciation must be notified in writing, at least one year in advance, to the British Government, which shall inform all the other Powers. It will only operate in respect of the denouncing Power.

**Art. 70**

The Powers represented at the London Naval Conference attach particular importance to the general recognition of the rules which they have adopted, and therefore express the hope that the Powers which were not represented there will accede to the present Declaration. They request the British Government to invite them to do so.

A Power which desires to accede shall notify its intention in writing to the British Government, and transmit simultaneously the act of accession, which will be deposited in the archives of the said Government. The said Government shall forthwith transmit to all the other Powers a duly certified copy of the notification, together with the act of accession, and communicate the date on which such notification was received. The accession takes effect sixty days after such date.

In respect of all matters concerning this Declaration, Acceding Powers shall be on the same footing as the Signatory Powers.

**Art. 71**

The present Declaration, which bears the date of 26 February 1909, may be signed in London up till 30 June 1909, by the Plenipotentiaries of the Powers represented at the Naval Conference.

In faith whereof the Plenipotentiaries have signed the present Declaration, and have thereto affixed their seals.

DONE AT London, the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall remain deposited in the archives of the British Government, and of which duly certified copies shall be sent through the diplomatic channel to the Powers represented at the Naval Conference.

(Here follow signatures)



# International Covenant on Civil and Political Rights 1966

*Adopted by Resolution 2200A (XXI) of the United Nations General Assembly on 16 December 1966*

The States Parties to the present Covenant,

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Recognizing* that these rights derive from the inherent dignity of the human person,

*Recognizing* that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

*Considering* the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

*Realizing* that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

## PART I

### Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **PART II**

### **Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
  - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.

### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

**Article 4**

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

**Article 5**

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

**PART III****Article 6**

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

#### **Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### **Article 8**

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;  
(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;  
(c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:
  - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
  - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
  - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
  - (iv) Any work or service which forms part of normal civil obligations.

**Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

**Article 10**

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;  
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

**Article 11**

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

**Article 12**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

**Article 13**

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

**Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

- (c) To be tried without undue delay;
  - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
  - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
  - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
  5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
  6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
  7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

### **Article 15**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

**Article 16**

Everyone shall have the right to recognition everywhere as a person before the law.

**Article 17**

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

**Article 18**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

**Article 19**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.



**Article 20**

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

**Article 21**

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

**Article 22**

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

**Article 23**

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

**Article 24**

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

**Article 25**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

**Article 26**

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

**PART IV****Article 28**

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

#### **Article 29**

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

#### **Article 30**

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

#### **Article 31**

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

### **Article 32**

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

### **Article 33**

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

### **Article 34**

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

**Article 35**

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

**Article 36**

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

**Article 37**

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

**Article 38**

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

**Article 39**

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
  - (a) Twelve members shall constitute a quorum;
  - (b) Decisions of the Committee shall be made by a majority vote of the members present.

**Article 40**

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

- (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
  - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

#### **Article 41**

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
  - (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;
  - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial commu-

- nication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
- (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
  - (d) The Committee shall hold closed meetings when examining communications under this article;
  - (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;
  - (f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
  - (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;
  - (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
    - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
    - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.
2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

**Article 42**

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;
- (b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.
5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.
6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.
7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:
  - (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;



- (b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
  - (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
  - (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.
8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.
9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

#### **Article 43**

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### **Article 44**

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

#### **Article 45**

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

## PART V

### Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

### Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

## PART VI

### Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

### Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

**Article 50**

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

**Article 51**

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

**Article 52**

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

**Article 53**

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

# Convention for the Protection of Human Rights and Fundamental Freedoms 1950

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

## **Article 1 – Obligation to respect human rights**

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

## **Section I – Rights and freedoms**

### **Article 2 – Right to life**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

### **Article 3 – Prohibition of torture**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### **Article 4 – Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term "forced or compulsory labour" shall not include:
  - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - (d) any work or service which forms part of normal civic obligations.

### **Article 5 – Right to liberty and security**

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
  - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
  3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
  4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
  5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

#### **Article 6 – Right to a fair trial**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### **Article 7 – No punishment without law**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

#### **Article 8 – Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### **Article 9 – Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

#### **Article 10 – Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### **Article 11 – Freedom of assembly and association**

1. Everyone has the right - to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

#### **Article 12 – Right to marry**

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

#### **Article 13 – Right to an effective remedy**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.



**Article 14 – Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

**Article 15 – Derogation in time of emergency**

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

**Article 16 – Restrictions on political activity of aliens**

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

**Article 17 – Prohibition of abuse of rights**

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

**Article 18 – Limitation on use of restrictions on rights**

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

**Section II – European Court of Human Rights****Article 19 – Establishment of the Court**

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European

Court of Human Rights, hereinafter referred to as “the Court”. It shall function on a permanent basis.

#### **Article 20 – Number of judges**

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

#### **Article 21 – Criteria for office**

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
2. The judges shall sit on the Court in their individual capacity.
3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

#### **Article 22 – Election of judges**

1. The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.
2. The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

#### **Article 23 – Terms of office**

1. The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.
2. The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.
3. In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.

4. In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.
5. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.
6. The terms of office of judges shall expire when they reach the age of 70.
7. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

#### **Article 24 – Dismissal**

No judge may be dismissed from his office unless the other judges decide by a majority of two-thirds that he has ceased to fulfil the required conditions.

#### **Article 25 – Registry and legal secretaries**

The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court. The Court shall be assisted by legal secretaries.

#### **Article 26 – Plenary Court**

The plenary Court shall:

1. elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;
2. set up Chambers, constituted for a fixed period of time;
3. elect the Presidents of the Chambers of the Court; they may be re-elected;
4. adopt the rules of the Court, and
5. elect the Registrar and one or more Deputy Registrars.

#### **Article 27 – Committees, Chambers and Grand Chamber**

1. To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
2. There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in respect of the State Party concerned or, if there is none or if he is unable to sit, a person of its choice who shall sit in the capacity of judge.

3. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned.

#### **Article 28 – Declarations of inadmissibility by committees**

A committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an application submitted under Article 34 where such a decision can be taken without further examination. The decision shall be final.

#### **Article 29 – Decisions by Chambers on admissibility and merits**

1. If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34.
2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33.
3. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

#### **Article 30 – Relinquishment of jurisdiction to the Grand Chamber**

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

#### **Article 31 – Powers of the Grand Chamber**

The Grand Chamber shall:

1. determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and
2. consider requests for advisory opinions submitted under Article 47.

**Article 32 – Jurisdiction of the Court**

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.
2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

**Article 33 – Inter-State cases**

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

**Article 34 – Individual applications**

Chart of Declarations under former Articles 25 and 46 of the ECHR The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

**Article 35 – Admissibility criteria**

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that:
  - (a) is anonymous; or
  - (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
3. The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.
4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

**Article 36 – Third party intervention**

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

**Article 37 – Striking out applications**

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that:
  - (a) the applicant does not intend to pursue his application; or
  - (b) the matter has been resolved; or
  - (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

**Article 38 – Examination of the case and friendly settlement proceedings**

1. If the Court declares the application admissible, it shall:
  - (a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;
  - (b) place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.
2. Proceedings conducted under paragraph 1.b shall be confidential.

**Article 39 – Finding of a friendly settlement**

If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

**Article 40 – Public hearings and access to documents**

1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

**Article 41 – Just satisfaction**

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

**Article 42 – Judgments of Chambers**

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

**Article 43 – Referral to the Grand Chamber**

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

**Article 44 – Final judgments**

1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final:
  - (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or
  - (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
  - (c) when the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

**Article 45 – Reasons for judgments and decisions**

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

**Article 46 – Binding force and execution of judgments**

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

**Article 47 – Advisory opinions**

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.
2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

**Article 48 – Advisory jurisdiction of the Court**

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

**Article 49 – Reasons for advisory opinions**

1. Reasons shall be given for advisory opinions of the Court.
2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.



**Article 50 – Expenditure on the Court**

The expenditure on the Court shall be borne by the Council of Europe.

**Article 51 – Privileges and immunities of judges**

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

**Section III – Miscellaneous provisions****Article 52 – Inquiries by the Secretary General**

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

**Article 53 – Safeguard for existing human rights**

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

**Article 54 – Powers of the Committee of Ministers**

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

**Article 55 – Exclusion of other means of dispute settlement**

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

**Article 56 – Territorial application**

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.

3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
4. Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

#### **Article 57 – Reservations**

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
2. Any reservation made under this article shall contain a brief statement of the law concerned.

#### **Article 58 – Denunciation**

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

#### **Article 59 – Signature and ratification**

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
2. The present Convention shall come into force after the deposit of ten instruments of ratification.

3. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
4. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4<sup>th</sup> day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

# International Bill of Human Rights – The Universal Declaration of Human Rights 1948

*Resolution 217 (III) of UN General Assembly adopted on 10 december 1948, part A*

## PREAMBLE

*Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Whereas* disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

*Whereas* it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

*Whereas* it is essential to promote the development of friendly relations between nations,

*Whereas* the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

*Whereas* Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

*Whereas* a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

*Now, Therefore*

*The General Assembly*

*Proclaims* this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

### **Article 1**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

### **Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### **Article 3**

Everyone has the right to life, liberty and security of person.

### **Article 4**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### **Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### **Article 6**

Everyone has the right to recognition everywhere as a person before the law.

**Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9**

No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11**

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13**

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14**

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**Article 15**

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Article 16**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article 17**

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

**Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 20**

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

**Article 21**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article 23**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.



**Article 25**

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29**

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

# Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal<sup>1</sup>

## Principle I

Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

## Principle II

The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

## Principle III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

## Principle IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

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<sup>1</sup>Text adopted by the International Law Commission at its second session in 1950 and submitted to the General Assembly as a part of the Commission's report covering the work of that session.

**Principle V**

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

**Principle VI**

The crimes hereinafter set out are punishable as crimes under international law:

(a) Crimes against peace:

- (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
- (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) War crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

**Principle VII**

Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

# Convention on the Prevention and Punishment of the Crime of Genocide 1948

*Adopted by Resolution 260A (III) of the United Nations General Assembly on 9 December 1948*

## **Article I**

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

## **Article II**

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

## **Article III**

The following acts shall be punishable:

- (a) Genocide;

- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

#### **Article IV**

Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

#### **Article V**

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III.

#### **Article VI**

Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

#### **Article VII**

Genocide and the other acts enumerated in Article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

#### **Article VIII**

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III.

**Article IX**

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

**Article X**

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

**Article XI**

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article XII**

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

**Article XIII**

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a procès-verbal and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in Article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

**Article XIV**

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

**Article XV**

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

**Article XVI**

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

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

**Article XVII**

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in Article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with Article XI;
- (b) Notifications received in accordance with Article XII;
- (c) The date upon which the present Convention comes into force in accordance with Article XIII;
- (d) Denunciations received in accordance with Article XIV;
- (e) The abrogation of the Convention in accordance with Article XV;
- (f) Notifications received in accordance with Article XVI.

**Article XVIII**

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States contemplated in Article XI.



**Article XIX**

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984

The States Parties to this Convention,

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Recognizing* that those rights derive from the inherent dignity of the human person,

*Considering* the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

*Having regard* to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

*Having regard* also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

*Desiring* to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

## Part I

### Article 1

1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

### Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

### Article 3

1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

### Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

**Article 5**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
  - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
  - (b) When the alleged offender is a national of that State;
  - (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

**Article 6**

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

**Article 7**

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contem-

plated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

### **Article 8**

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

### **Article 9**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

**Article 10**

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

**Article 11**

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

**Article 12**

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

**Article 13**

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

**Article 14**

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

**Article 15**

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

**Article 16**

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

**Part II****Article 17**

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.
3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.
6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.
7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties. (amendment (see General Assembly resolution 47/111 of 16 December 1992); status of ratification)

#### **Article 18**

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that: (a) Six members shall constitute a quorum; (b) Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff



and facilities, incurred by the United Nations pursuant to paragraph 3 of this article. (amendment (see General Assembly resolution 47/111 of 16 December 1992); status of ratification)

### **Article 19**

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

### **Article 20**

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to

the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

### **Article 21**

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
  - (a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
  - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
  - (c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;
  - (d) The Committee shall hold closed meetings when examining communications under this article;

- (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;
  - (f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
  - (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
  - (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
    - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
    - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.
2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

## Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:
  - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
  - (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
6. The Committee shall hold closed meetings when examining communications under this article.
7. The Committee shall forward its views to the State Party concerned and to the individual.
8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

### **Article 23**

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities,

privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### **Article 24**

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

### **Part III**

#### **Article 25**

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### **Article 26**

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### **Article 27**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

#### **Article 28**

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

**Article 29**

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

**Article 30**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

**Article 31**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

### **Article 32**

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

### **Article 33**

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

# Rome Statute of the International Criminal Court 1998<sup>1</sup>

*The States Parties to this Statute,*

*Conscious* that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

*Mindful* that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

*Recognizing* that such grave crimes threaten the peace, security and well-being of the world,

*Affirming* that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

*Determined* to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

*Recalling* that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

*Reaffirming* the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,

*Emphasizing* in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

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<sup>1</sup>Two resolutions of the UN Security Council have been attached to the ICC Statute. See pp. 622-624. ICC Statute is as amended in 2019. Subsequent footnotes in this chapter (except footnote 2 on p. 551) originate from the text of ICC Statute, see: <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>.



*Determined* to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

*Emphasizing* that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

*Resolved* to guarantee lasting respect for and the enforcement of international justice,

Have agreed as follows

## **Part 1**

### **Establishment of the Court**

#### **Article 1. The Court**

An International Criminal Court (“the Court”) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

#### **Article 2. Relationship of the Court with the United Nations**

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

#### **Article 3. Seat of the Court**

1. The seat of the Court shall be established at The Hague in the Netherlands (“the host State”).
2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.
3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

#### **Article 4. Legal status and powers of the Court**

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

## **Part 2**

### **Jurisdiction, admissibility and applicable law**

#### **Article 5. Crimes within the jurisdiction of the Court<sup>1</sup>**

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

#### **Article 6. Genocide**

For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

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<sup>1</sup>Paragraph 2 of article 5 (“The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.”) was deleted in accordance with RC/Res.6, annex I, of 11 June 2010.

## Article 7. Crimes against humanity

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
  - (a) Murder;
  - (b) Extermination;
  - (c) Enslavement;
  - (d) Deportation or forcible transfer of population;
  - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
  - (f) Torture;
  - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
  - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
  - (i) Enforced disappearance of persons;
  - (j) The crime of apartheid;
  - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
2. For the purpose of paragraph 1:
  - (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
  - (b) “Extermination” includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
  - (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
  - (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

- (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
  - (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
  - (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
  - (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
  - (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

#### **Article 8. War crimes<sup>1</sup>**

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, “war crimes” means:
  - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
    - (i) Wilful killing;
    - (ii) Torture or inhuman treatment, including biological experiments;

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<sup>1</sup>Paragraphs 2 (e) (xiii) to 2 (e) (xv) were amended by resolution RC/Res.5 of 11 June 2010 (adding paragraphs 2 (e) (xiii) to 2(e) (xv)).

- (iii) Wilfully causing great suffering, or serious injury to body or health;
  - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
  - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
  - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
  - (vii) Unlawful deportation or transfer or unlawful confinement;
  - (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
  - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
  - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
  - (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
  - (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
  - (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals

- and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
  - (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
  - (xii) Declaring that no quarter will be given;
  - (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
  - (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
  - (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
  - (xvi) Pillaging a town or place, even when taken by assault;
  - (xvii) Employing poison or poisoned weapons;
  - (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
  - (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
  - (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
  - (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
  - (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
  - (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

- (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
  - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - (iii) Taking of hostages;
  - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

- (v) Pillaging a town or place, even when taken by assault;
  - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
  - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
  - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - (ix) Killing or wounding treacherously a combatant adversary;
  - (x) Declaring that no quarter will be given;
  - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
  - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
  - (xiii) Employing poison or poisoned weapons;
  - (xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
  - (xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

### **Article 8 bis. Crime of aggression<sup>1</sup>**

1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control

<sup>1</sup>Inserted by resolution RC/Res.6 of 11 June 2010.



over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:
  - (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
  - (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
  - (c) The blockade of the ports or coasts of a State by the armed forces of another State;
  - (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
  - (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
  - (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
  - (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

### **Article 9. Elements of Crimes<sup>1</sup>**

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7, 8 and 8 *bis*. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.<sup>2</sup>

<sup>1</sup>As amended by resolution RC/Res.6 of 11 June 2010 (inserting the reference to article 8 *bis*).

<sup>2</sup>At the 2010 Review Conference, in addition to amending the Statute, the State parties adopted “The Elements of Crimes”. They are available at: <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/o/ElementsOfCrimesEng.pdf>.

2. Amendments to the Elements of Crimes may be proposed by:

- (a) Any State Party;
- (b) The judges acting by an absolute majority;
- (c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

#### **Article 10**

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

#### **Article 11. Jurisdiction *ratione temporis***

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.
2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

#### **Article 12. Preconditions to the exercise of jurisdiction**

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
  - (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
  - (b) The State of which the person accused of the crime is a national.
3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

### **Article 13. Exercise of jurisdiction**

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
- (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

### **Article 14. Referral of a situation by a State Party**

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.
2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

### **Article 15. Prosecutor**

1. The Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.
2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.
3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.
4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent

determinations by the Court with regard to the jurisdiction and admissibility of a case.

5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.
6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

**Article 15 bis. Exercise of jurisdiction over the crime of aggression (State referral, *proprio motu*)<sup>1</sup>**

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraphs (a) and (c), subject to the provisions of this article.
2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties.
3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.
4. The Court may, in accordance with article 12, exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction by lodging a declaration with the Registrar. The withdrawal of such a declaration may be effected at any time and shall be considered by the State Party within three years.
5. In respect of a State that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's nationals or on its territory.
6. Where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The Prosecutor shall notify the Secretary-General of the United Nations of the situation before the Court, including any relevant information and documents.

<sup>1</sup>Inserted by resolution RC/Res.6 of 11 June 2010.

7. Where the Security Council has made such a determination, the Prosecutor may proceed with the investigation in respect of a crime of aggression.
8. Where no such determination is made within six months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression, provided that the Pre-Trial Division has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in article 15, and the Security Council has not decided otherwise in accordance with article 16.
9. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.
10. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

**Article 15 *ter*. Exercise of jurisdiction over the crime of aggression (Security Council referral)<sup>1</sup>**

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraph (b), subject to the provisions of this article.
2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties.
3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.
4. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.
5. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

**Article 16. Deferral of investigation or prosecution**

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

<sup>1</sup>Inserted by resolution RC/Res.6 of 11 June 2010.

**Article 17. Issues of admissibility**

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:
  - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
  - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
  - (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
  - (d) The case is not of sufficient gravity to justify further action by the Court.
2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:
  - (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
  - (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
  - (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.
3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

**Article 18. Preliminary rulings regarding admissibility**

1. When a situation has been referred to the Court pursuant to article 13 (a) and the Prosecutor has determined that there would be a reasonable basis to commence an investigation, or the Prosecutor initiates an investigation pursuant to articles 13 (c) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The Prosecutor may notify such States on a confidential

basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.

2. Within one month of receipt of that notification, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.
3. The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's unwillingness or inability genuinely to carry out the investigation.
4. The State concerned or the Prosecutor may appeal to the Appeals Chamber against a ruling of the Pre-Trial Chamber, in accordance with article 82. The appeal may be heard on an expedited basis.
5. When the Prosecutor has deferred an investigation in accordance with paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor of the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay.
6. Pending a ruling by the Pre-Trial Chamber, or at any time when the Prosecutor has deferred an investigation under this article, the Prosecutor may, on an exceptional basis, seek authority from the Pre-Trial Chamber to pursue necessary investigative steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available.
7. A State which has challenged a ruling of the Pre-Trial Chamber under this article may challenge the admissibility of a case under article 19 on the grounds of additional significant facts or significant change of circumstances.

#### **Article 19. Challenges to the jurisdiction of the Court or the admissibility of a case**

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.
2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:

- (a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;
  - (b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or
  - (c) A State from which acceptance of jurisdiction is required under article 12.
3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.
4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court, may be based only on article 17, paragraph 1 (c).
5. A State referred to in paragraph 2 (b) and (c) shall make a challenge at the earliest opportunity.
6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82.
7. If a challenge is made by a State referred to in paragraph 2 (b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.
8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:
  - (a) To pursue necessary investigative steps of the kind referred to in article 18, paragraph 6;
  - (b) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and
  - (c) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.
9. The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.



10. If the Court has decided that a case is inadmissible under article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under article 17.
11. If the Prosecutor, having regard to the matters referred to in article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State to which deferral of the proceedings has taken place.

#### **Article 20. *Ne bis in idem*<sup>1</sup>**

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.
2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.
3. No person who has been tried by another court for conduct also proscribed under article 6, 7, 8 or 8 *bis* shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:
  - (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or
  - (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

#### **Article 21. Applicable law**

1. The Court shall apply:
  - (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
  - (b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

<sup>1</sup>As amended by resolution RC/Res.6 of 11 June 2010 (inserting the reference to article 8 *bis*).

- (c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.
2. The Court may apply principles and rules of law as interpreted in its previous decisions.
3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

### **Part 3**

## **General principles of criminal law**

#### **Article 22. *Nullum crimen sine lege***

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.
2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.
3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

#### **Article 23. *Nulla poena sine lege***

A person convicted by the Court may be punished only in accordance with this Statute.

#### **Article 24. Non-retroactivity *ratione personae***

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.
2. In the event of a change in the law applicable to a given case prior to a final judgment, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

**Article 25. Individual criminal responsibility<sup>1</sup>**

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
  - (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
  - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
  - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
  - (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
    - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
    - (ii) Be made in the knowledge of the intention of the group to commit the crime;
  - (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
  - (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.
- 3 *bis*. In respect of the crime of aggression, the provisions of this article shall apply only to persons in a position effectively to exercise control over or to direct the political or military action of a State.
4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

<sup>1</sup>As amended by resolution RC/Res.6 of 11 June 2010 (adding paragraph 3 *bis*).

**Article 26. Exclusion of jurisdiction over persons under eighteen**

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

**Article 27. Irrelevance of official capacity**

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

**Article 28. Responsibility of commanders and other superiors**

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

- (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
  - (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
  - (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
  - (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

- (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
- (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

### **Article 29. Non-applicability of statute of limitations**

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

### **Article 30. Mental element**

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
2. For the purposes of this article, a person has intent where:
  - (a) In relation to conduct, that person means to engage in the conduct;
  - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this article, “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. “Know” and “knowingly” shall be construed accordingly.

### **Article 31. Grounds for excluding criminal responsibility**

1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person’s conduct:
  - (a) The person suffers from a mental disease or defect that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;
  - (b) The person is in a state of intoxication that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;

- (c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;
  - (d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:
    - (i) Made by other persons; or
    - (ii) Constituted by other circumstances beyond that person's control.
2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.
  3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 21. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

### **Article 32. Mistake of fact or mistake of law**

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.
2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33.

### **Article 33. Superior orders and prescription of law**

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:
  - (a) The person was under a legal obligation to obey orders of the Government or the superior in question;

- 
- (b) The person did not know that the order was unlawful; and
  - (c) The order was not manifestly unlawful.
2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

## **Part 4**

### **Composition and administration of the Court**

#### **Article 34. Organs of the Court**

The Court shall be composed of the following organs:

- (a) The Presidency;
- (b) An Appeals Division, a Trial Division and a Pre-Trial Division;
- (c) The Office of the Prosecutor;
- (d) The Registry.

#### **Article 35. Service of judges**

1. All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.
2. The judges composing the Presidency shall serve on a full-time basis as soon as they are elected.
3. The Presidency may, on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extent the remaining judges shall be required to serve on a full-time basis. Any such arrangement shall be without prejudice to the provisions of article 40.
4. The financial arrangements for judges not required to serve on a full-time basis shall be made in accordance with article 49.

#### **Article 36. Qualifications, nomination and election of judges**

1. Subject to the provisions of paragraph 2, there shall be 18 judges of the Court.
2. (a) The Presidency, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties.

- (b) Any such proposal shall then be considered at a meeting of the Assembly of States Parties to be convened in accordance with article 112. The proposal shall be considered adopted if approved at the meeting by a vote of two thirds of the members of the Assembly of States Parties and shall enter into force at such time as decided by the Assembly of States Parties.
  - (c) (i) Once a proposal for an increase in the number of judges has been adopted under subparagraph (b), the election of the additional judges shall take place at the next session of the Assembly of States Parties in accordance with paragraphs 3 to 8, and article 37, paragraph 2;
  - (ii) Once a proposal for an increase in the number of judges has been adopted and brought into effect under subparagraphs (b) and (c) (i), it shall be open to the Presidency at any time thereafter, if the workload of the Court justifies it, to propose a reduction in the number of judges, provided that the number of judges shall not be reduced below that specified in paragraph 1. The proposal shall be dealt with in accordance with the procedure laid down in subparagraphs (a) and (b). In the event that the proposal is adopted, the number of judges shall be progressively decreased as the terms of office of serving judges expire, until the necessary number has been reached.
3. (a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.
- (b) Every candidate for election to the Court shall:
- (i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or
  - (ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;
- (c) Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.
4. (a) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either:
- (i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or
  - (ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.

Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3.



- (b) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.
  - (c) The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate shall be established by the Assembly of States Parties.
5. For the purposes of the election, there shall be two lists of candidates:
  - List A containing the names of candidates with the qualifications specified in paragraph 3 (b) (i); and
  - List B containing the names of candidates with the qualifications specified in paragraph 3 (b) (ii).

A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the two lists.
6. (a) The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article 112. Subject to paragraph 7, the persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting.
  - (b) In the event that a sufficient number of judges is not elected on the first ballot, successive ballots shall be held in accordance with the procedures laid down in subparagraph (a) until the remaining places have been filled.
7. No two judges may be nationals of the same State. A person who, for the purposes of membership of the Court, could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.
8. (a) The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:
  - (i) The representation of the principal legal systems of the world;
  - (ii) Equitable geographical representation; and
  - (iii) A fair representation of female and male judges.
  - (b) States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.
9. (a) Subject to subparagraph (b), judges shall hold office for a term of nine years and, subject to subparagraph (c) and to article 37, paragraph 2, shall not be eligible for re-election.

- (b) At the first election, one third of the judges elected shall be selected by lot to serve for a term of three years; one third of the judges elected shall be selected by lot to serve for a term of six years; and the remainder shall serve for a term of nine years.
  - (c) A judge who is selected to serve for a term of three years under subparagraph (b) shall be eligible for re-election for a full term.
10. Notwithstanding paragraph 9, a judge assigned to a Trial or Appeals Chamber in accordance with article 39 shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber.

### **Article 37. Judicial vacancies**

1. In the event of a vacancy, an election shall be held in accordance with article 36 to fill the vacancy.
2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36.

### **Article 38. The Presidency**

1. The President and the First and Second Vice-Presidents shall be elected by an absolute majority of the judges. They shall each serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election once.
2. The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the President and the First Vice-President are unavailable or disqualified.
3. The President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for:
  - (a) The proper administration of the Court, with the exception of the Office of the Prosecutor; and
  - (b) The other functions conferred upon it in accordance with this Statute.
4. In discharging its responsibility under paragraph 3 (a), the Presidency shall coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern.

**Article 39. Chambers**

1. As soon as possible after the election of the judges, the Court shall organize itself into the divisions specified in article 34, paragraph (b). The Appeals Division shall be composed of the President and four other judges, the Trial Division of not less than six judges and the Pre-Trial Division of not less than six judges. The assignment of judges to divisions shall be based on the nature of the functions to be performed by each division and the qualifications and experience of the judges elected to the Court, in such a way that each division shall contain an appropriate combination of expertise in criminal law and procedure and in international law. The Trial and Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience.
2. (a) The judicial functions of the Court shall be carried out in each division by Chambers.
  - (b) (i) The Appeals Chamber shall be composed of all the judges of the Appeals Division;
  - (ii) The functions of the Trial Chamber shall be carried out by three judges of the Trial Division
  - (iii) The functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with this Statute and the Rules of Procedure and Evidence;
  - (c) Nothing in this paragraph shall preclude the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.
3. (a) Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the division concerned.
  - (b) Judges assigned to the Appeals Division shall serve in that division for their entire term of office.
4. Judges assigned to the Appeals Division shall serve only in that division. Nothing in this article shall, however, preclude the temporary attachment of judges from the Trial Division to the Pre-Trial Division or vice versa, if the Presidency considers that the efficient management of the Court's workload so requires, provided that under no circumstances shall a judge who has participated in the pre-trial phase of a case be eligible to sit on the Trial Chamber hearing that case.

**Article 40. Independence of the judges**

1. The judges shall be independent in the performance of their functions.
2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

3. Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature.
4. Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges. Where any such question concerns an individual judge, that judge shall not take part in the decision.

#### **Article 41. Excusing and disqualification of judges**

1. The Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute, in accordance with the Rules of Procedure and Evidence.
2. (a) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, *inter alia*, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.  
(b) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.  
(c) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

#### **Article 42. The Office of the Prosecutor**

1. The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source.
2. The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.
3. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election.
5. Neither the Prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. They shall not engage in any other occupation of a professional nature.
6. The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case.
7. Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, *inter alia*, they have previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.
8. Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber.
  - (a) The person being investigated or prosecuted may at any time request the disqualification of the Prosecutor or a Deputy Prosecutor on the grounds set out in this article;
  - (b) The Prosecutor or the Deputy Prosecutor, as appropriate, shall be entitled to present his or her comments on the matter;
9. The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

#### **Article 43. The Registry**

1. The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor in accordance with article 42.
2. The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise his or her functions under the authority of the President of the Court.

3. The Registrar and the Deputy Registrar shall be persons of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court.
4. The judges shall elect the Registrar by an absolute majority by secret ballot, taking into account any recommendation by the Assembly of States Parties. If the need arises and upon the recommendation of the Registrar, the judges shall elect, in the same manner, a Deputy Registrar.
5. The Registrar shall hold office for a term of five years, shall be eligible for re-election once and shall serve on a full-time basis. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided upon by an absolute majority of the judges, and may be elected on the basis that the Deputy Registrar shall be called upon to serve as required.
6. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.

#### **Article 44. Staff**

1. The Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators.
2. In the employment of staff, the Prosecutor and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, *mutatis mutandis*, to the criteria set forth in article 36, paragraph 8.
3. The Registrar, with the agreement of the Presidency and the Prosecutor, shall propose Staff Regulations which include the terms and conditions upon which the staff of the Court shall be appointed, remunerated and dismissed. The Staff Regulations shall be approved by the Assembly of States Parties.
4. The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court. The Prosecutor may accept any such offer on behalf of the Office of the Prosecutor. Such gratis personnel shall be employed in accordance with guidelines to be established by the Assembly of States Parties.

**Article 45. Solemn undertaking**

Before taking up their respective duties under this Statute, the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall each make a solemn undertaking in open court to exercise his or her respective functions impartially and conscientiously.

**Article 46. Removal from office**

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or the Deputy Registrar shall be removed from office if a decision to this effect is made in accordance with paragraph 2, in cases where that person:
  - (a) Is found to have committed serious misconduct or a serious breach of his or her duties under this Statute, as provided for in the Rules of Procedure and Evidence; or
  - (b) Is unable to exercise the functions required by this Statute.
2. A decision as to the removal from office of a judge, the Prosecutor or a Deputy Prosecutor under paragraph 1 shall be made by the Assembly of States Parties, by secret ballot:
  - (a) In the case of a judge, by a two-thirds majority of the States Parties upon a recommendation adopted by a two-thirds majority of the other judges;
  - (b) In the case of the Prosecutor, by an absolute majority of the States Parties;
  - (c) In the case of a Deputy Prosecutor, by an absolute majority of the States Parties upon the recommendation of the Prosecutor.
3. A decision as to the removal from office of the Registrar or Deputy Registrar shall be made by an absolute majority of the judges.
4. A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar whose conduct or ability to exercise the functions of the office as required by this Statute is challenged under this article shall have full opportunity to present and receive evidence and to make submissions in accordance with the Rules of Procedure and Evidence. The person in question shall not otherwise participate in the consideration of the matter.

**Article 47. Disciplinary measures**

A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar who has committed misconduct of a less serious nature than that set out in article 46, paragraph 1, shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence.

**Article 48. Privileges and immunities**

1. The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.
2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.
3. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy the privileges and immunities and facilities necessary for the performance of their functions, in accordance with the agreement on the privileges and immunities of the Court.
4. Counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.
5. The privileges and immunities of:
  - (a) A judge or the Prosecutor may be waived by an absolute majority of the judges;
  - (b) The Registrar may be waived by the Presidency;
  - (c) The Deputy Prosecutors and staff of the Office of the Prosecutor may be waived by the Prosecutor;
  - (d) The Deputy Registrar and staff of the Registry may be waived by the Registrar.

**Article 49. Salaries, allowances and expenses**

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall receive such salaries, allowances and expenses as may be decided upon by the Assembly of States Parties. These salaries and allowances shall not be reduced during their terms of office.

**Article 50. Official and working languages**

1. The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The judgements of the Court, as well as other decisions resolving fundamental issues before the Court, shall be published in the official languages. The Presidency shall, in accordance with the criteria established by the Rules of Procedure and Evidence, determine which decisions may be considered as resolving fundamental issues for the purposes of this paragraph.



2. The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages.
3. At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

#### **Article 51. Rules of Procedure and Evidence**

1. The Rules of Procedure and Evidence shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.
2. Amendments to the Rules of Procedure and Evidence may be proposed by:
  - (a) Any State Party;
  - (b) The judges acting by an absolute majority; or
  - (c) The Prosecutor.

Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties.
4. The Rules of Procedure and Evidence, amendments thereto and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules shall not be applied retroactively to the detriment of the person who is being investigated or prosecuted or who has been convicted.
5. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

#### **Article 52. Regulations of the Court**

1. The judges shall, in accordance with this Statute and the Rules of Procedure and Evidence, adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning.
2. The Prosecutor and the Registrar shall be consulted in the elaboration of the Regulations and any amendments thereto.

3. The Regulations and any amendments thereto shall take effect upon adoption unless otherwise decided by the judges. Immediately upon adoption, they shall be circulated to States Parties for comments. If within six months there are no objections from a majority of States Parties, they shall remain in force.

## **Part 5**

### **Investigation and prosecution**

#### **Article 53. Initiation of an investigation**

1. The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:
  - (a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;
  - (b) The case is or would be admissible under article 17; and
  - (c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is based solely on subparagraph (c) above, he or she shall inform the Pre-Trial Chamber.

2. If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because:
  - (a) There is not a sufficient legal or factual basis to seek a warrant or summons under article 58;
  - (b) The case is inadmissible under article 17; or
  - (c) A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime;

the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral under article 14 or the Security Council in a case under article 13, paragraph (b), of his or her conclusion and the reasons for the conclusion.

3. (a) At the request of the State making a referral under article 14 or the Security Council under article 13, paragraph (b), the Pre-Trial Chamber may review

- a decision of the Prosecutor under paragraph 1 or 2 not to proceed and may request the Prosecutor to reconsider that decision.
- (b) In addition, the Pre-Trial Chamber may, on its own initiative, review a decision of the Prosecutor not to proceed if it is based solely on paragraph 1 (c) or 2 (c). In such a case, the decision of the Prosecutor shall be effective only if confirmed by the Pre-Trial Chamber.
4. The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts or information.

#### **Article 54. Duties and powers of the Prosecutor with respect to investigations**

1. The Prosecutor shall:
- (a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;
- (b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and
- (c) Fully respect the rights of persons arising under this Statute.
2. The Prosecutor may conduct investigations on the territory of a State:
- (a) In accordance with the provisions of Part 9; or
- (b) As authorized by the Pre-Trial Chamber under article 57, paragraph 3 (d).
3. The Prosecutor may:
- (a) Collect and examine evidence;
- (b) Request the presence of and question persons being investigated, victims and witnesses;
- (c) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;
- (d) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;

- (e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and
- (f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

### **Article 55. Rights of persons during an investigation**

1. In respect of an investigation under this Statute, a person:
  - (a) Shall not be compelled to incriminate himself or herself or to confess guilt;
  - (b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;
  - (c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and
  - (d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.
2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:
  - (a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;
  - (b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;
  - (c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and
  - (d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

**Article 56. Role of the Pre-Trial Chamber in relation to a unique investigative opportunity**

1. (a) Where the Prosecutor considers an investigation to present a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, the Prosecutor shall so inform the Pre-Trial Chamber.
  - (b) In that case, the Pre-Trial Chamber may, upon request of the Prosecutor, take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defence.
  - (c) Unless the Pre-Trial Chamber orders otherwise, the Prosecutor shall provide the relevant information to the person who has been arrested or appeared in response to a summons in connection with the investigation referred to in subparagraph (a), in order that he or she may be heard on the matter.
2. The measures referred to in paragraph 1 (b) may include:
  - (a) Making recommendations or orders regarding procedures to be followed;
  - (b) Directing that a record be made of the proceedings;
  - (c) Appointing an expert to assist;
  - (d) Authorizing counsel for a person who has been arrested, or appeared before the Court in response to a summons, to participate, or where there has not yet been such an arrest or appearance or counsel has not been designated, appointing another counsel to attend and represent the interests of the defence;
  - (e) Naming one of its members or, if necessary, another available judge of the Pre-Trial or Trial Division to observe and make recommendations or orders regarding the collection and preservation of evidence and the questioning of persons;
  - (f) Taking such other action as may be necessary to collect or preserve evidence.
3. (a) Where the Prosecutor has not sought measures pursuant to this article but the Pre-Trial Chamber considers that such measures are required to preserve evidence that it deems would be essential for the defence at trial, it shall consult with the Prosecutor as to whether there is good reason for the Prosecutor's failure to request the measures. If upon consultation, the Pre-Trial Chamber concludes that the Prosecutor's failure to request such measures is unjustified, the Pre-Trial Chamber may take such measures on its own initiative.
  - (b) A decision of the Pre-Trial Chamber to act on its own initiative under this paragraph may be appealed by the Prosecutor. The appeal shall be heard on an expedited basis.
4. The admissibility of evidence preserved or collected for trial pursuant to this article, or the record thereof, shall be governed at trial by article 69, and given such weight as determined by the Trial Chamber.

**Article 57. Functions and powers of the Pre-Trial Chamber**

1. Unless otherwise provided in this Statute, the Pre-Trial Chamber shall exercise its functions in accordance with the provisions of this article.
2. (a) Orders or rulings of the Pre-Trial Chamber issued under articles 15, 18, 19, 54, paragraph 2, 61, paragraph 7, and 72 must be concurred in by a majority of its judges.  
(b) In all other cases, a single judge of the Pre-Trial Chamber may exercise the functions provided for in this Statute, unless otherwise provided for in the Rules of Procedure and Evidence or by a majority of the Pre-Trial Chamber.
3. In addition to its other functions under this Statute, the Pre-Trial Chamber may:
  - (a) At the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation;
  - (b) Upon the request of a person who has been arrested or has appeared pursuant to a summons under article 58, issue such orders, including measures such as those described in article 56, or seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence;
  - (c) Where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons who have been arrested or appeared in response to a summons, and the protection of national security information;
  - (d) Authorize the Prosecutor to take specific investigative steps within the territory of a State Party without having secured the cooperation of that State under Part 9 if, whenever possible having regard to the views of the State concerned, the Pre-Trial Chamber has determined in that case that the State is clearly unable to execute a request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation under Part 9.
  - (e) Where a warrant of arrest or a summons has been issued under article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93, paragraph 1 (k), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.

**Article 58. Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear**

1. At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having

examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:

- (a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and
  - (b) The arrest of the person appears necessary:
    - (i) To ensure the person's appearance at trial,
    - (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings, or
    - (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.
2. The application of the Prosecutor shall contain:
- (a) The name of the person and any other relevant identifying information;
  - (b) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed;
  - (c) A concise statement of the facts which are alleged to constitute those crimes;
  - (d) A summary of the evidence and any other information which establish reasonable grounds to believe that the person committed those crimes; and
  - (e) The reason why the Prosecutor believes that the arrest of the person is necessary.
3. The warrant of arrest shall contain:
- (a) The name of the person and any other relevant identifying information;
  - (b) A specific reference to the crimes within the jurisdiction of the Court for which the person's arrest is sought; and
  - (c) A concise statement of the facts which are alleged to constitute those crimes.
4. The warrant of arrest shall remain in effect until otherwise ordered by the Court.
5. On the basis of the warrant of arrest, the Court may request the provisional arrest or the arrest and surrender of the person under Part 9.
6. The Prosecutor may request the Pre-Trial Chamber to amend the warrant of arrest by modifying or adding to the crimes specified therein. The Pre-Trial Chamber shall so amend the warrant if it is satisfied that there are reasonable grounds to believe that the person committed the modified or additional crimes.

7. As an alternative to seeking a warrant of arrest, the Prosecutor may submit an application requesting that the Pre-Trial Chamber issue a summons for the person to appear. If the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person's appearance, it shall issue the summons, with or without conditions restricting liberty (other than detention) if provided for by national law, for the person to appear. The summons shall contain:
  - (a) The name of the person and any other relevant identifying information;
  - (b) The specified date on which the person is to appear;
  - (c) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed; and
  - (d) A concise statement of the facts which are alleged to constitute the crime.

The summons shall be served on the person.

#### **Article 59. Arrest proceedings in the custodial State**

1. A State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of Part 9.
2. A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:
  - (a) The warrant applies to that person;
  - (b) The person has been arrested in accordance with the proper process; and
  - (c) The person's rights have been respected.
3. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender.
4. In reaching a decision on any such application, the competent authority in the custodial State shall consider whether, given the gravity of the alleged crimes, there are urgent and exceptional circumstances to justify interim release and whether necessary safeguards exist to ensure that the custodial State can fulfil its duty to surrender the person to the Court. It shall not be open to the competent authority of the custodial State to consider whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (a) and (b).
5. The Pre-Trial Chamber shall be notified of any request for interim release and shall make recommendations to the competent authority in the custodial State. The competent authority in the custodial State shall give full consideration to such



recommendations, including any recommendations on measures to prevent the escape of the person, before rendering its decision.

6. If the person is granted interim release, the Pre-Trial Chamber may request periodic reports on the status of the interim release.
7. Once ordered to be surrendered by the custodial State, the person shall be delivered to the Court as soon as possible.

#### **Article 60. Initial proceedings before the Court**

1. Upon the surrender of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to apply for interim release pending trial.
2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.
3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.
4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.
5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

#### **Article 61. Confirmation of the charges before trial**

1. Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.
2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:
  - (a) Waived his or her right to be present; or

- (b) Fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held.

In that case, the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.

3. Within a reasonable time before the hearing, the person shall:
  - (a) Be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and
  - (b) Be informed of the evidence on which the Prosecutor intends to rely at the hearing.

The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.

4. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.
5. At the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial.
6. At the hearing, the person may:
  - (a) Object to the charges;
  - (b) Challenge the evidence presented by the Prosecutor; and
  - (c) Present evidence.
7. The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:
  - (a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;
  - (b) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;
  - (c) Adjourn the hearing and request the Prosecutor to consider:

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- (i) Providing further evidence or conducting further investigation with respect to a particular charge; or
    - (ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.
  8. Where the Pre-Trial Chamber declines to confirm a charge, the Prosecutor shall not be precluded from subsequently requesting its confirmation if the request is supported by additional evidence.
  9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.
  10. Any warrant previously issued shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.
  11. Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

## **Part 6**

### **The trial**

#### **Article 62. Place of trial**

Unless otherwise decided, the place of the trial shall be the seat of the Court.

#### **Article 63. Trial in the presence of the accused**

1. The accused shall be present during the trial.
2. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

**Article 64. Functions and powers of the Trial Chamber**

1. The functions and powers of the Trial Chamber set out in this article shall be exercised in accordance with this Statute and the Rules of Procedure and Evidence.
2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.
3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:
  - (a) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;
  - (b) Determine the language or languages to be used at trial; and
  - (c) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of the trial to enable adequate preparation for trial.
4. The Trial Chamber may, if necessary for its effective and fair functioning, refer preliminary issues to the Pre-Trial Chamber or, if necessary, to another available judge of the Pre-Trial Division.
5. Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused.
6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:
  - (a) Exercise any functions of the Pre-Trial Chamber referred to in article 61, paragraph 11;
  - (b) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute;
  - (c) Provide for the protection of confidential information;
  - (d) Order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties;
  - (e) Provide for the protection of the accused, witnesses and victims; and
  - (f) Rule on any other relevant matters.
7. The trial shall be held in public. The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in article 68, or to protect confidential or sensitive information to be given in evidence.

8. (a) At the commencement of the trial, the Trial Chamber shall have read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Trial Chamber shall satisfy itself that the accused understands the nature of the charges. It shall afford him or her the opportunity to make an admission of guilt in accordance with article 65 or to plead not guilty.
- (b) At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner. Subject to any directions of the presiding judge, the parties may submit evidence in accordance with the provisions of this Statute.
9. The Trial Chamber shall have, *inter alia*, the power on application of a party or on its own motion to:
  - (a) Rule on the admissibility or relevance of evidence; and
  - (b) Take all necessary steps to maintain order in the course of a hearing.
10. The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar.

#### **Article 65. Proceedings on an admission of guilt**

1. Where the accused makes an admission of guilt pursuant to article 64, paragraph 8 (a), the Trial Chamber shall determine whether:
  - (a) The accused understands the nature and consequences of the admission of guilt;
  - (b) The admission is voluntarily made by the accused after sufficient consultation with defence counsel; and
  - (c) The admission of guilt is supported by the facts of the case that are contained in:
    - (i) The charges brought by the Prosecutor and admitted by the accused;
    - (ii) Any materials presented by the Prosecutor which supplement the charges and which the accused accepts; and
    - (iii) Any other evidence, such as the testimony of witnesses, presented by the Prosecutor or the accused.
2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt, together with any additional evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.

3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt as not having been made, in which case it shall order that the trial be continued under the ordinary trial procedures provided by this Statute and may remit the case to another Trial Chamber.
4. Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims, the Trial Chamber may:
  - (a) Request the Prosecutor to present additional evidence, including the testimony of witnesses; or
  - (b) Order that the trial be continued under the ordinary trial procedures provided by this Statute, in which case it shall consider the admission of guilt as not having been made and may remit the case to another Trial Chamber.
5. Any discussions between the Prosecutor and the defence regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court.

#### **Article 66. Presumption of innocence**

1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.
2. The onus is on the Prosecutor to prove the guilt of the accused.
3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

#### **Article 67. Rights of the accused**

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
  - (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;
  - (c) To be tried without undue delay;
  - (d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;

- (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;
  - (f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks;
  - (g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
  - (h) To make an unsworn oral or written statement in his or her defence; and
  - (i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.
2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

#### **Article 68. Protection of the victims and witnesses and their participation in the proceedings**

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings *in camera* or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.
4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.
5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

#### **Article 69. Evidence**

1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.
2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of *viva voce* (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.
3. The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.
4. The Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.



5. The Court shall respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence.
6. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.
7. Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:
  - (a) The violation casts substantial doubt on the reliability of the evidence; or
  - (b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.
8. When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.

#### **Article 70. Offences against the administration of justice**

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:
  - (a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;
  - (b) Presenting evidence that the party knows is false or forged;
  - (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
  - (d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;
  - (e) Retaliating against an official of the Court on account of duties performed by that or another official;
  - (f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.
2. The principles and procedures governing the Court's exercise of jurisdiction over offences under this article shall be those provided for in the Rules of Procedure and Evidence. The conditions for providing international cooperation to the Court with respect to its proceedings under this article shall be governed by the domestic laws of the requested State.
3. In the event of conviction, the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both.

4. (a) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;
- (b) Upon request by the Court, whenever it deems it proper, the State Party shall submit the case to its competent authorities for the purpose of prosecution. Those authorities shall treat such cases with diligence and devote sufficient resources to enable them to be conducted effectively.

#### **Article 71. Sanctions for misconduct before the Court**

1. The Court may sanction persons present before it who commit misconduct, including disruption of its proceedings or deliberate refusal to comply with its directions, by administrative measures other than imprisonment, such as temporary or permanent removal from the courtroom, a fine or other similar measures provided for in the Rules of Procedure and Evidence.
2. The procedures governing the imposition of the measures set forth in paragraph 1 shall be those provided for in the Rules of Procedure and Evidence.

#### **Article 72. Protection of national security information**

1. This article applies in any case where the disclosure of the information or documents of a State would, in the opinion of that State, prejudice its national security interests. Such cases include those falling within the scope of article 56, paragraphs 2 and 3, article 61, paragraph 3, article 64, paragraph 3, article 67, paragraph 2, article 68, paragraph 6, article 87, paragraph 6 and article 93, as well as cases arising at any other stage of the proceedings where such disclosure may be at issue.
2. This article shall also apply when a person who has been requested to give information or evidence has refused to do so or has referred the matter to the State on the ground that disclosure would prejudice the national security interests of a State and the State concerned confirms that it is of the opinion that disclosure would prejudice its national security interests.
3. Nothing in this article shall prejudice the requirements of confidentiality applicable under article 54, paragraph 3 (e) and (f), or the application of article 73.
4. If a State learns that information or documents of the State are being, or are likely to be, disclosed at any stage of the proceedings, and it is of the opinion that disclosure would prejudice its national security interests, that State shall have the right to intervene in order to obtain resolution of the issue in accordance with this article.
5. If, in the opinion of a State, disclosure of information would prejudice its national security interests, all reasonable steps will be taken by the State, acting in conjunc-

tion with the Prosecutor, the defence or the Pre-Trial Chamber or Trial Chamber, as the case may be, to seek to resolve the matter by cooperative means. Such steps may include:

- (a) Modification or clarification of the request;
  - (b) A determination by the Court regarding the relevance of the information or evidence sought, or a determination as to whether the evidence, though relevant, could be or has been obtained from a source other than the requested State;
  - (c) Obtaining the information or evidence from a different source or in a different form; or
  - (d) Agreement on conditions under which the assistance could be provided including, among other things, providing summaries or redactions, limitations on disclosure, use of *in camera* or *ex parte* proceedings, or other protective measures permissible under the Statute and the Rules of Procedure and Evidence.
6. Once all reasonable steps have been taken to resolve the matter through cooperative means, and if the State considers that there are no means or conditions under which the information or documents could be provided or disclosed without prejudice to its national security interests, it shall so notify the Prosecutor or the Court of the specific reasons for its decision, unless a specific description of the reasons would itself necessarily result in such prejudice to the State's national security interests.
7. Thereafter, if the Court determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused, the Court may undertake the following actions:
- (a) Where disclosure of the information or document is sought pursuant to a request for cooperation under Part 9 or the circumstances described in paragraph 2, and the State has invoked the ground for refusal referred to in article 93, paragraph 4:
    - (i) The Court may, before making any conclusion referred to in subparagraph 7 (a) (ii), request further consultations for the purpose of considering the State's representations, which may include, as appropriate, hearings *in camera* and *ex parte*;
    - (ii) If the Court concludes that, by invoking the ground for refusal under article 93, paragraph 4, in the circumstances of the case, the requested State is not acting in accordance with its obligations under this Statute, the Court may refer the matter in accordance with article 87, paragraph 7, specifying the reasons for its conclusion; and
    - (iii) The Court may make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances; or

- (b) In all other circumstances:
  - (i) Order disclosure; or
  - (ii) To the extent it does not order disclosure, make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances.

### **Article 73. Third-party information or documents**

If a State Party is requested by the Court to provide a document or information in its custody, possession or control, which was disclosed to it in confidence by a State, intergovernmental organization or international organization, it shall seek the consent of the originator to disclose that document or information. If the originator is a State Party, it shall either consent to disclosure of the information or document or undertake to resolve the issue of disclosure with the Court, subject to the provisions of article 72. If the originator is not a State Party and refuses to consent to disclosure, the requested State shall inform the Court that it is unable to provide the document or information because of a pre-existing obligation of confidentiality to the originator.

### **Article 74. Requirements for the decision**

1. All the judges of the Trial Chamber shall be present at each stage of the trial and throughout their deliberations. The Presidency may, on a case-by-case basis, designate, as available, one or more alternate judges to be present at each stage of the trial and to replace a member of the Trial Chamber if that member is unable to continue attending.
2. The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.
3. The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.
4. The deliberations of the Trial Chamber shall remain secret.
5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

### **Article 75. Reparations to victims**

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in

its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.
4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.
5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.
6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

#### **Article 76. Sentencing**

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.
2. Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.
3. Where paragraph 2 applies, any representations under article 75 shall be heard during the further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.
4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.

## Part 7 Penalties

### Article 77. Applicable penalties

1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:
  - (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or
  - (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
2. In addition to imprisonment, the Court may order:
  - (a) A fine under the criteria provided for in the Rules of Procedure and Evidence;
  - (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

### Article 78. Determination of the sentence

1. In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.
2. In imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime.
3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with article 77, paragraph 1 (b).

### Article 79. Trust Fund

1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.
2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.
3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

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**Article 80. Non-prejudice to national application of penalties and national laws**

Nothing in this Part affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties prescribed in this Part.

## **Part 8 Appeal and revision**

**Article 81. Appeal against decision of acquittal or conviction or against sentence**

1. A decision under article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:
  - (a) The Prosecutor may make an appeal on any of the following grounds:
    - (i) Procedural error,
    - (ii) Error of fact, or
    - (iii) Error of law;
  - (b) The convicted person, or the Prosecutor on that person's behalf, may make an appeal on any of the following grounds:
    - (i) Procedural error,
    - (ii) Error of fact,
    - (iii) Error of law, or
    - (iv) Any other ground that affects the fairness or reliability of the proceedings or decision.
2. (a) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence;
  - (b) If on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under article 81, paragraph 1 (a) or (b), and may render a decision on conviction in accordance with article 83;
  - (c) The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2 (a).
3. (a) Unless the Trial Chamber orders otherwise, a convicted person shall remain in custody pending an appeal;

- (b) When a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the Prosecutor is also appealing, the release may be subject to the conditions under subparagraph (c) below;
  - (c) In case of an acquittal, the accused shall be released immediately, subject to the following:
    - (i) Under exceptional circumstances, and having regard, *inter alia*, to the concrete risk of flight, the seriousness of the offence charged and the probability of success on appeal, the Trial Chamber, at the request of the Prosecutor, may maintain the detention of the person pending appeal;
    - (ii) A decision by the Trial Chamber under subparagraph (c) (i) may be appealed in accordance with the Rules of Procedure and Evidence.
4. Subject to the provisions of paragraph 3 (a) and (b), execution of the decision or sentence shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings.

#### **Article 82. Appeal against other decisions**

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:
  - (a) A decision with respect to jurisdiction or admissibility;
  - (b) A decision granting or denying release of the person being investigated or prosecuted;
  - (c) A decision of the Pre-Trial Chamber to act on its own initiative under article 56, paragraph 3;
  - (d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.
2. A decision of the Pre-Trial Chamber under article 57, paragraph 3 (d), may be appealed against by the State concerned or by the Prosecutor, with the leave of the Pre-Trial Chamber. The appeal shall be heard on an expedited basis.
3. An appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.
4. A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.



**Article 83. Proceedings on appeal**

1. For the purposes of proceedings under article 81 and this article, the Appeals Chamber shall have all the powers of the Trial Chamber.
2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:
  - (a) Reverse or amend the decision or sentence; or
  - (b) Order a new trial before a different Trial Chamber.

For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been appealed only by the person convicted, or the Prosecutor on that person's behalf, it cannot be amended to his or her detriment.

3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.
4. The judgement of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgement shall state the reasons on which it is based. When there is no unanimity, the judgement of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.
5. The Appeals Chamber may deliver its judgement in the absence of the person acquitted or convicted.

**Article 84. Revision of conviction or sentence**

1. The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused's death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person's behalf, may apply to the Appeals Chamber to revise the final judgement of conviction or sentence on the grounds that:
  - (a) New evidence has been discovered that:
    - (i) Was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making application; and
    - (ii) Is sufficiently important that had it been proved at trial it would have been likely to have resulted in a different verdict;
  - (b) It has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;

- (c) One or more of the judges who participated in conviction or confirmation of the charges has committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under article 46.
2. The Appeals Chamber shall reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:
  - (a) Reconvene the original Trial Chamber;
  - (b) Constitute a new Trial Chamber; or
  - (c) Retain jurisdiction over the matter,

with a view to, after hearing the parties in the manner set forth in the Rules of Procedure and Evidence, arriving at a determination on whether the judgement should be revised.

#### **Article 85. Compensation to an arrested or convicted person**

1. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
2. When a person has by a final decision been convicted of a criminal offence, and when subsequently his or her conviction has been reversed on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.
3. In exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation, according to the criteria provided in the Rules of Procedure and Evidence, to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.

## **Part 9 International cooperation and judicial assistance**

#### **Article 86. General obligation to cooperate**

States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

**Article 87. Requests for cooperation: general provisions**

1. (a) The Court shall have the authority to make requests to States Parties for cooperation. The requests shall be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, acceptance, approval or accession.

Subsequent changes to the designation shall be made by each State Party in accordance with the Rules of Procedure and Evidence.

- (b) When appropriate, without prejudice to the provisions of subparagraph (a), requests may also be transmitted through the International Criminal Police Organization or any appropriate regional organization.
2. Requests for cooperation and any documents supporting the request shall either be in or be accompanied by a translation into an official language of the requested State or one of the working languages of the Court, in accordance with the choice made by that State upon ratification, acceptance, approval or accession.  
Subsequent changes to this choice shall be made in accordance with the Rules of Procedure and Evidence.
3. The requested State shall keep confidential a request for cooperation and any documents supporting the request, except to the extent that the disclosure is necessary for execution of the request.
4. In relation to any request for assistance presented under this Part, the Court may take such measures, including measures related to the protection of information, as may be necessary to ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families. The Court may request that any information that is made available under this Part shall be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, potential witnesses and their families.
5. (a) The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.  
  - (b) Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.
6. The Court may ask any intergovernmental organization to provide information or documents. The Court may also ask for other forms of cooperation and assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate.

7. Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.

### **Article 88. Availability of procedures under national law**

States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part.

### **Article 89. Surrender of persons to the Court**

1. The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.
2. Where the person sought for surrender brings a challenge before a national court on the basis of the principle of *ne bis in idem* as provided in article 20, the requested State shall immediately consult with the Court to determine if there has been a relevant ruling on admissibility. If the case is admissible, the requested State shall proceed with the execution of the request. If an admissibility ruling is pending, the requested State may postpone the execution of the request for surrender of the person until the Court makes a determination on admissibility.
3. (a) A State Party shall authorize, in accordance with its national procedural law, transportation through its territory of a person being surrendered to the Court by another State, except where transit through that State would impede or delay the surrender.  
(b) A request by the Court for transit shall be transmitted in accordance with article 87. The request for transit shall contain:
  - (i) A description of the person being transported;
  - (ii) A brief statement of the facts of the case and their legal characterization;  
and
  - (iii) The warrant for arrest and surrender;(c) A person being transported shall be detained in custody during the period of transit;  
(d) No authorization is required if the person is transported by air and no landing is scheduled on the territory of the transit State;

- (e) If an unscheduled landing occurs on the territory of the transit State, that State may require a request for transit from the Court as provided for in subparagraph (b). The transit State shall detain the person being transported until the request for transit is received and the transit is effected, provided that detention for purposes of this subparagraph may not be extended beyond 96 hours from the unscheduled landing unless the request is received within that time.
4. If the person sought is being proceeded against or is serving a sentence in the requested State for a crime different from that for which surrender to the Court is sought, the requested State, after making its decision to grant the request, shall consult with the Court.

#### **Article 90. Competing requests**

1. A State Party which receives a request from the Court for the surrender of a person under article 89 shall, if it also receives a request from any other State for the extradition of the same person for the same conduct which forms the basis of the crime for which the Court seeks the person's surrender, notify the Court and the requesting State of that fact.
2. Where the requesting State is a State Party, the requested State shall give priority to the request from the Court if:
  - (a) The Court has, pursuant to article 18 or 19, made a determination that the case in respect of which surrender is sought is admissible and that determination takes into account the investigation or prosecution conducted by the requesting State in respect of its request for extradition; or
  - (b) The Court makes the determination described in subparagraph (a) pursuant to the requested State's notification under paragraph 1.
3. Where a determination under paragraph 2 (a) has not been made, the requested State may, at its discretion, pending the determination of the Court under paragraph 2 (b), proceed to deal with the request for extradition from the requesting State but shall not extradite the person until the Court has determined that the case is inadmissible. The Court's determination shall be made on an expedited basis.
4. If the requesting State is a State not Party to this Statute the requested State, if it is not under an international obligation to extradite the person to the requesting State, shall give priority to the request for surrender from the Court, if the Court has determined that the case is admissible.
5. Where a case under paragraph 4 has not been determined to be admissible by the Court, the requested State may, at its discretion, proceed to deal with the request for extradition from the requesting State.

6. In cases where paragraph 4 applies except that the requested State is under an existing international obligation to extradite the person to the requesting State not Party to this Statute, the requested State shall determine whether to surrender the person to the Court or extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to:
  - (a) The respective dates of the requests;
  - (b) The interests of the requesting State including, where relevant, whether the crime was committed in its territory and the nationality of the victims and of the person sought; and
  - (c) The possibility of subsequent surrender between the Court and the requesting State.
7. Where a State Party which receives a request from the Court for the surrender of a person also receives a request from any State for the extradition of the same person for conduct other than that which constitutes the crime for which the Court seeks the person's surrender:
  - (a) The requested State shall, if it is not under an existing international obligation to extradite the person to the requesting State, give priority to the request from the Court;
  - (b) The requested State shall, if it is under an existing international obligation to extradite the person to the requesting State, determine whether to surrender the person to the Court or to extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to those set out in paragraph 6, but shall give special consideration to the relative nature and gravity of the conduct in question.
8. Where pursuant to a notification under this article, the Court has determined a case to be inadmissible, and subsequently extradition to the requesting State is refused, the requested State shall notify the Court of this decision.

#### **Article 91. Contents of request for arrest and surrender**

1. A request for arrest and surrender shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).
2. In the case of a request for the arrest and surrender of a person for whom a warrant of arrest has been issued by the Pre-Trial Chamber under article 58, the request shall contain or be supported by:

- (a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;
  - (b) A copy of the warrant of arrest; and
  - (c) Such documents, statements or information as may be necessary to meet the requirements for the surrender process in the requested State, except that those requirements should not be more burdensome than those applicable to requests for extradition pursuant to treaties or arrangements between the requested State and other States and should, if possible, be less burdensome, taking into account the distinct nature of the Court.
3. In the case of a request for the arrest and surrender of a person already convicted, the request shall contain or be supported by:
- (a) A copy of any warrant of arrest for that person;
  - (b) A copy of the judgement of conviction;
  - (c) Information to demonstrate that the person sought is the one referred to in the judgement of conviction; and
  - (d) If the person sought has been sentenced, a copy of the sentence imposed and, in the case of a sentence for imprisonment, a statement of any time already served and the time remaining to be served.
4. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (c). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

#### **Article 92. Provisional arrest**

1. In urgent cases, the Court may request the provisional arrest of the person sought, pending presentation of the request for surrender and the documents supporting the request as specified in article 91.
2. The request for provisional arrest shall be made by any medium capable of delivering a written record and shall contain:
  - (a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;
  - (b) A concise statement of the crimes for which the person's arrest is sought and of the facts which are alleged to constitute those crimes, including, where possible, the date and location of the crime;
  - (c) A statement of the existence of a warrant of arrest or a judgement of conviction against the person sought; and

- (d) A statement that a request for surrender of the person sought will follow.
3. A person who is provisionally arrested may be released from custody if the requested State has not received the request for surrender and the documents supporting the request as specified in article 91 within the time limits specified in the Rules of Procedure and Evidence. However, the person may consent to surrender before the expiration of this period if permitted by the law of the requested State. In such a case, the requested State shall proceed to surrender the person to the Court as soon as possible.
  4. The fact that the person sought has been released from custody pursuant to paragraph 3 shall not prejudice the subsequent arrest and surrender of that person if the request for surrender and the documents supporting the request are delivered at a later date.

#### **Article 93. Other forms of cooperation**

1. States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions:
  - (a) The identification and whereabouts of persons or the location of items;
  - (b) The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court;
  - (c) The questioning of any person being investigated or prosecuted;
  - (d) The service of documents, including judicial documents;
  - (e) Facilitating the voluntary appearance of persons as witnesses or experts before the Court;
  - (f) The temporary transfer of persons as provided in paragraph 7;
  - (g) The examination of places or sites, including the exhumation and examination of grave sites;
  - (h) The execution of searches and seizures;
  - (i) The provision of records and documents, including official records and documents;
  - (j) The protection of victims and witnesses and the preservation of evidence;
  - (k) The identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and
  - (l) Any other type of assistance which is not prohibited by the law of the requested State, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court.



2. The Court shall have the authority to provide an assurance to a witness or an expert appearing before the Court that he or she will not be prosecuted, detained or subjected to any restriction of personal freedom by the Court in respect of any act or omission that preceded the departure of that person from the requested State.
3. Where execution of a particular measure of assistance detailed in a request presented under paragraph 1, is prohibited in the requested State on the basis of an existing fundamental legal principle of general application, the requested State shall promptly consult with the Court to try to resolve the matter. In the consultations, consideration should be given to whether the assistance can be rendered in another manner or subject to conditions. If after consultations the matter cannot be resolved, the Court shall modify the request as necessary.
4. In accordance with article 72, a State Party may deny a request for assistance, in whole or in part, only if the request concerns the production of any documents or disclosure of evidence which relates to its national security.
5. Before denying a request for assistance under paragraph 1 (l), the requested State shall consider whether the assistance can be provided subject to specified conditions, or whether the assistance can be provided at a later date or in an alternative manner, provided that if the Court or the Prosecutor accepts the assistance subject to conditions, the Court or the Prosecutor shall abide by them.
6. If a request for assistance is denied, the requested State Party shall promptly inform the Court or the Prosecutor of the reasons for such denial.
7. (a) The Court may request the temporary transfer of a person in custody for purposes of identification or for obtaining testimony or other assistance. The person may be transferred if the following conditions are fulfilled:
  - (i) The person freely gives his or her informed consent to the transfer; and
  - (ii) The requested State agrees to the transfer, subject to such conditions as that State and the Court may agree.
- (b) The person being transferred shall remain in custody. When the purposes of the transfer have been fulfilled, the Court shall return the person without delay to the requested State.
8. (a) The Court shall ensure the confidentiality of documents and information, except as required for the investigation and proceedings described in the request.
- (b) The requested State may, when necessary, transmit documents or information to the Prosecutor on a confidential basis. The Prosecutor may then use them solely for the purpose of generating new evidence.

- (c) The requested State may, on its own motion or at the request of the Prosecutor, subsequently consent to the disclosure of such documents or information. They may then be used as evidence pursuant to the provisions of Parts 5 and 6 and in accordance with the Rules of Procedure and Evidence.
9. (a) (i) In the event that a State Party receives competing requests, other than for surrender or extradition, from the Court and from another State pursuant to an international obligation, the State Party shall endeavour, in consultation with the Court and the other State, to meet both requests, if necessary by postponing or attaching conditions to one or the other request.
- (ii) Failing that, competing requests shall be resolved in accordance with the principles established in article 90.
- (b) Where, however, the request from the Court concerns information, property or persons which are subject to the control of a third State or an international organization by virtue of an international agreement, the requested States shall so inform the Court and the Court shall direct its request to the third State or international organization.
10. (a) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State.
- (b) (i) The assistance provided under subparagraph (a) shall include, *inter alia*:
- a. The transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the Court; and
- b. The questioning of any person detained by order of the Court;
- (ii) In the case of assistance under subparagraph (b) (i) a:
- a. If the documents or other types of evidence have been obtained with the assistance of a State, such transmission shall require the consent of that State;
- b. If the statements, documents or other types of evidence have been provided by a witness or expert, such transmission shall be subject to the provisions of article 68.
- (c) The Court may, under the conditions set out in this paragraph, grant a request for assistance under this paragraph from a State which is not a Party to this Statute.

**Article 94. Postponement of execution of a request in respect of ongoing investigation or prosecution**

1. If the immediate execution of a request would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the

requested State may postpone the execution of the request for a period of time agreed upon with the Court. However, the postponement shall be no longer than is necessary to complete the relevant investigation or prosecution in the requested State. Before making a decision to postpone, the requested State should consider whether the assistance may be immediately provided subject to certain conditions.

2. If a decision to postpone is taken pursuant to paragraph 1, the Prosecutor may, however, seek measures to preserve evidence, pursuant to article 93, paragraph 1 (j).

#### **Article 95. Postponement of execution of a request in respect of an admissibility challenge**

Where there is an admissibility challenge under consideration by the Court pursuant to article 18 or 19, the requested State may postpone the execution of a request under this Part pending a determination by the Court, unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to article 18 or 19.

#### **Article 96. Contents of request for other forms of assistance under article 93**

1. A request for other forms of assistance referred to in article 93 shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).
2. The request shall, as applicable, contain or be supported by the following:
  - (a) A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request;
  - (b) As much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided;
  - (c) A concise statement of the essential facts underlying the request;
  - (d) The reasons for and details of any procedure or requirement to be followed;
  - (e) Such information as may be required under the law of the requested State in order to execute the request; and
  - (f) Any other information relevant in order for the assistance sought to be provided.
3. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (e). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

4. The provisions of this article shall, where applicable, also apply in respect of a request for assistance made to the Court.

#### **Article 97. Consultations**

Where a State Party receives a request under this Part in relation to which it identifies problems which may impede or prevent the execution of the request, that State shall consult with the Court without delay in order to resolve the matter. Such problems may include, *inter alia*:

- (a) Insufficient information to execute the request;
- (b) In the case of a request for surrender, the fact that despite best efforts, the person sought cannot be located or that the investigation conducted has determined that the person in the requested State is clearly not the person named in the warrant; or
- (c) The fact that execution of the request in its current form would require the requested State to breach a pre-existing treaty obligation undertaken with respect to another State.

#### **Article 98. Cooperation with respect to waiver of immunity and consent to surrender**

1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.
2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

#### **Article 99. Execution of requests under articles 93 and 96**

1. Requests for assistance shall be executed in accordance with the relevant procedure under the law of the requested State and, unless prohibited by such law, in the manner specified in the request, including following any procedure outlined therein or permitting persons specified in the request to be present at and assist in the execution process.
2. In the case of an urgent request, the documents or evidence produced in response shall, at the request of the Court, be sent urgently.

3. Replies from the requested State shall be transmitted in their original language and form.
4. Without prejudice to other articles in this Part, where it is necessary for the successful execution of a request which can be executed without any compulsory measures, including specifically the interview of or taking evidence from a person on a voluntary basis, including doing so without the presence of the authorities of the requested State Party if it is essential for the request to be executed, and the examination without modification of a public site or other public place, the Prosecutor may execute such request directly on the territory of a State as follows:
  - (a) When the State Party requested is a State on the territory of which the crime is alleged to have been committed, and there has been a determination of admissibility pursuant to article 18 or 19, the Prosecutor may directly execute such request following all possible consultations with the requested State Party;
  - (b) In other cases, the Prosecutor may execute such request following consultations with the requested State Party and subject to any reasonable conditions or concerns raised by that State Party. Where the requested State Party identifies problems with the execution of a request pursuant to this subparagraph it shall, without delay, consult with the Court to resolve the matter.
5. Provisions allowing a person heard or examined by the Court under article 72 to invoke restrictions designed to prevent disclosure of confidential information connected with national security shall also apply to the execution of requests for assistance under this article.

#### **Article 100. Costs**

1. The ordinary costs for execution of requests in the territory of the requested State shall be borne by that State, except for the following, which shall be borne by the Court:
  - (a) Costs associated with the travel and security of witnesses and experts or the transfer under article 93 of persons in custody;
  - (b) Costs of translation, interpretation and transcription;
  - (c) Travel and subsistence costs of the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of any organ of the Court;
  - (d) Costs of any expert opinion or report requested by the Court;
  - (e) Costs associated with the transport of a person being surrendered to the Court by a custodial State; and
  - (f) Following consultations, any extraordinary costs that may result from the execution of a request.

2. The provisions of paragraph 1 shall, as appropriate, apply to requests from States Parties to the Court. In that case, the Court shall bear the ordinary costs of execution.

#### **Article 101. Rule of speciality**

1. A person surrendered to the Court under this Statute shall not be proceeded against, punished or detained for any conduct committed prior to surrender, other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered.
2. The Court may request a waiver of the requirements of paragraph 1 from the State which surrendered the person to the Court and, if necessary, the Court shall provide additional information in accordance with article 91. States Parties shall have the authority to provide a waiver to the Court and should endeavour to do so.

#### **Article 102. Use of terms**

For the purposes of this Statute:

- (a) “surrender” means the delivering up of a person by a State to the Court, pursuant to this Statute.
- (b) “extradition” means the delivering up of a person by one State to another as provided by treaty, convention or national legislation.

## **Part 10 Enforcement**

#### **Article 103. Role of States in enforcement of sentences of imprisonment**

1. (a) A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.  
(b) At the time of declaring its willingness to accept sentenced persons, a State may attach conditions to its acceptance as agreed by the Court and in accordance with this Part.  
(c) A State designated in a particular case shall promptly inform the Court whether it accepts the Court’s designation.
2. (a) The State of enforcement shall notify the Court of any circumstances, including the exercise of any conditions agreed under paragraph 1, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days’ notice of any such known or foreseeable circumstances. During

this period, the State of enforcement shall take no action that might prejudice its obligations under article 110.

- (b) Where the Court cannot agree to the circumstances referred to in subparagraph (a), it shall notify the State of enforcement and proceed in accordance with article 104, paragraph 1.
3. In exercising its discretion to make a designation under paragraph 1, the Court shall take into account the following:
    - (a) The principle that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution, as provided in the Rules of Procedure and Evidence;
    - (b) The application of widely accepted international treaty standards governing the treatment of prisoners;
    - (c) The views of the sentenced person;
    - (d) The nationality of the sentenced person;
    - (e) Such other factors regarding the circumstances of the crime or the person sentenced, or the effective enforcement of the sentence, as may be appropriate in designating the State of enforcement.
  4. If no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State, in accordance with the conditions set out in the headquarters agreement referred to in article 3, paragraph 2. In such a case, the costs arising out of the enforcement of a sentence of imprisonment shall be borne by the Court.

#### **Article 104. Change in designation of State of enforcement**

1. The Court may, at any time, decide to transfer a sentenced person to a prison of another State.
2. A sentenced person may, at any time, apply to the Court to be transferred from the State of enforcement.

#### **Article 105. Enforcement of the sentence**

1. Subject to conditions which a State may have specified in accordance with article 103, paragraph 1 (b), the sentence of imprisonment shall be binding on the States Parties, which shall in no case modify it.
2. The Court alone shall have the right to decide any application for appeal and revision. The State of enforcement shall not impede the making of any such application by a sentenced person.

**Article 106. Supervision of enforcement of sentences and conditions of imprisonment**

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing treatment of prisoners.
2. The conditions of imprisonment shall be governed by the law of the State of enforcement and shall be consistent with widely accepted international treaty standards governing treatment of prisoners; in no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.
3. Communications between a sentenced person and the Court shall be unimpeded and confidential.

**Article 107. Transfer of the person upon completion of sentence**

1. Following completion of the sentence, a person who is not a national of the State of enforcement may, in accordance with the law of the State of enforcement, be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless the State of enforcement authorizes the person to remain in its territory.
2. If no State bears the costs arising out of transferring the person to another State pursuant to paragraph 1, such costs shall be borne by the Court.
3. Subject to the provisions of article 108, the State of enforcement may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

**Article 108. Limitation on the prosecution or punishment of other offences**

1. A sentenced person in the custody of the State of enforcement shall not be subject to prosecution or punishment or to extradition to a third State for any conduct engaged in prior to that person's delivery to the State of enforcement, unless such prosecution, punishment or extradition has been approved by the Court at the request of the State of enforcement.
2. The Court shall decide the matter after having heard the views of the sentenced person.
3. Paragraph 1 shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of the State of enforcement after having served



the full sentence imposed by the Court, or returns to the territory of that State after having left it.

#### **Article 109. Enforcement of fines and forfeiture measures**

1. States Parties shall give effect to fines or forfeitures ordered by the Court under Part 7, without prejudice to the rights of bona fide third parties, and in accordance with the procedure of their national law.
2. If a State Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.
3. Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by a State Party as a result of its enforcement of a judgement of the Court shall be transferred to the Court.

#### **Article 110. Review by the Court concerning reduction of sentence**

1. The State of enforcement shall not release the person before expiry of the sentence pronounced by the Court.
2. The Court alone shall have the right to decide any reduction of sentence, and shall rule on the matter after having heard the person.
3. When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.
4. In its review under paragraph 3, the Court may reduce the sentence if it finds that one or more of the following factors are present:
  - (a) The early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions;
  - (b) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or
  - (c) Other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence.
5. If the Court determines in its initial review under paragraph 3 that it is not appropriate to reduce the sentence, it shall thereafter review the question of reduction of sentence at such intervals and applying such criteria as provided for in the Rules of Procedure and Evidence.

**Article 111. Escape**

If a convicted person escapes from custody and flees the State of enforcement, that State may, after consultation with the Court, request the person's surrender from the State in which the person is located pursuant to existing bilateral or multilateral arrangements, or may request that the Court seek the person's surrender, in accordance with Part 9. It may direct that the person be delivered to the State in which he or she was serving the sentence or to another State designated by the Court.

## **Part 11 Assembly of States Parties**

**Article 112. Assembly of States Parties**

1. An Assembly of States Parties to this Statute is hereby established. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed this Statute or the Final Act may be observers in the Assembly.
2. The Assembly shall:
  - (a) Consider and adopt, as appropriate, recommendations of the Preparatory Commission;
  - (b) Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;
  - (c) Consider the reports and activities of the Bureau established under paragraph 3 and take appropriate action in regard thereto;
  - (d) Consider and decide the budget for the Court;
  - (e) Decide whether to alter, in accordance with article 36, the number of judges;
  - (f) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;
  - (g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.
3.
  - (a) The Assembly shall have a Bureau consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for three-year terms.
  - (b) The Bureau shall have a representative character, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.
  - (c) The Bureau shall meet as often as necessary, but at least once a year. It shall assist the Assembly in the discharge of its responsibilities.

4. The Assembly may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.
5. The President of the Court, the Prosecutor and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly and of the Bureau.
6. The Assembly shall meet at the seat of the Court or at the Headquarters of the United Nations once a year and, when circumstances so require, hold special sessions. Except as otherwise specified in this Statute, special sessions shall be convened by the Bureau on its own initiative or at the request of one third of the States Parties.
7. Each State Party shall have one vote. Every effort shall be made to reach decisions by consensus in the Assembly and in the Bureau. If consensus cannot be reached, except as otherwise provided in the Statute:
  - (a) Decisions on matters of substance must be approved by a two-thirds majority of those present and voting provided that an absolute majority of States Parties constitutes the quorum for voting;
  - (b) Decisions on matters of procedure shall be taken by a simple majority of States Parties present and voting.
8. A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.
9. The Assembly shall adopt its own rules of procedure.
10. The official and working languages of the Assembly shall be those of the General Assembly of the United Nations.

## **Part 12**

### **Financing**

#### **Article 113. Financial Regulations**

Except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by this Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties.

**Article 114. Payment of expenses**

Expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be paid from the funds of the Court.

**Article 115. Funds of the Court and of the Assembly of States Parties**

The expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, as provided for in the budget decided by the Assembly of States Parties, shall be provided by the following sources:

- (a) Assessed contributions made by States Parties;
- (b) Funds provided by the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council.

**Article 116. Voluntary contributions**

Without prejudice to article 115, the Court may receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties.

**Article 117. Assessment of contributions**

The contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based.

**Article 118. Annual audit**

The records, books and accounts of the Court, including its annual financial statements, shall be audited annually by an independent auditor.

## **Part 13 Final clauses**

**Article 119. Settlement of disputes**

1. Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.
2. Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States

Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

#### **Article 120. Reservations**

No reservations may be made to this Statute.

#### **Article 121. Amendments**

1. After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties.
2. No sooner than three months from the date of notification, the Assembly of States Parties, at its next meeting, shall, by a majority of those present and voting, decide whether to take up the proposal. The Assembly may deal with the proposal directly or convene a Review Conference if the issue involved so warrants.
3. The adoption of an amendment at a meeting of the Assembly of States Parties or at a Review Conference on which consensus cannot be reached shall require a two-thirds majority of States Parties.
4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them.
5. Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory.
6. If an amendment has been accepted by seven-eighths of States Parties in accordance with paragraph 4, any State Party which has not accepted the amendment may withdraw from this Statute with immediate effect, notwithstanding article 127, paragraph 1, but subject to article 127, paragraph 2, by giving notice no later than one year after the entry into force of such amendment.
7. The Secretary-General of the United Nations shall circulate to all States Parties any amendment adopted at a meeting of the Assembly of States Parties or at a Review Conference.

**Article 122. Amendments to provisions of an institutional nature**

1. Amendments to provisions of this Statute which are of an exclusively institutional nature, namely, article 35, article 36, paragraphs 8 and 9, article 37, article 38, article 39, paragraphs 1 (first two sentences), 2 and 4, article 42, paragraphs 4 to 9, article 43, paragraphs 2 and 3, and articles 44, 46, 47 and 49, may be proposed at any time, notwithstanding article 121, paragraph 1, by any State Party. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations or such other person designated by the Assembly of States Parties who shall promptly circulate it to all States Parties and to others participating in the Assembly.
2. Amendments under this article on which consensus cannot be reached shall be adopted by the Assembly of States Parties or by a Review Conference, by a two-thirds majority of States Parties. Such amendments shall enter into force for all States Parties six months after their adoption by the Assembly or, as the case may be, by the Conference.

**Article 123. Review of the Statute**

1. Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.
2. At any time thereafter, at the request of a State Party and for the purposes set out in paragraph 1, the Secretary-General of the United Nations shall, upon approval by a majority of States Parties, convene a Review Conference.
3. The provisions of article 121, paragraphs 3 to 7, shall apply to the adoption and entry into force of any amendment to the Statute considered at a Review Conference.

**Article 124. Transitional Provision**

(deleted<sup>1</sup>)

**Article 125. Signature, ratification, acceptance, approval or accession**

1. This Statute shall be open for signature by all States in Rome, at the headquarters of the Food and Agriculture Organization of the United Nations, on 17 July 1998. Thereafter, it shall remain open for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until 31 December 2000.

<sup>1</sup>Article 124 is deleted by resolution ICC-ASP/14/Res.2 of 26 November 2015.

2. This Statute is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 126. Entry into force**

1. This Statute shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.

#### **Article 127. Withdrawal**

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
2. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

#### **Article 128. Authentic texts**

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

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

DONE at Rome, this 17<sup>th</sup> day of July 1998.

## **Resolution 1422 (2002) of the UN Security Council**

Adopted by the Security Council at its 4572<sup>nd</sup> meeting, on 12 July 2002

*The Security Council,*

*Taking note* of the entry into force on 1 July 2002, of the Statute of the International Criminal Court (ICC), done at Rome 17 July 1998 (the Rome Statute),

*Emphasizing* the importance to international peace and security of United Nations operations,

*Noting* that not all States are parties to the Rome Statute,

*Noting* that States Parties to the Rome Statute have chosen to accept its jurisdiction in accordance with the Statute and in particular the principle of complementarity,

*Noting* that States not Party to the Rome Statute will continue to fulfil their responsibilities in their national jurisdictions in relation to international crimes,

*Determining* that operations established or authorized by the United Nations Security Council are deployed to maintain or restore international peace and security,

*Determining further* that it is in the interests of international peace and security to facilitate Member States' ability to contribute to operations established or authorized by the United Nations Security Council,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Requests*, consistent with the provisions of Article 16 of the Rome Statute, that the ICC, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise;
2. Expresses the intention to renew the request in paragraph 1 under the same conditions each 1 July for further 12-month periods for as long as may be necessary;
3. Decides that Member States shall take no action inconsistent with paragraph 1 and with their international obligations;
4. Decides to remain seized of the matter.

## **Resolution 1593 (2005) of the UN Security Council**

Adopted by the Security Council at its 5158<sup>th</sup> meeting, on 31 March 2005

*The Security Council,*



*Taking note* of the report of the International Commission of Inquiry on violations of international humanitarian law and human rights law in Darfur (S/2005/60),

*Recalling* article 16 of the Rome Statute under which no investigation or prosecution may be commenced or proceeded with by the International Criminal Court for a period of 12 months after a Security Council request to that effect,

*Also recalling* articles 75 and 79 of the Rome Statute and encouraging States to contribute to the ICC Trust Fund for Victims,

*Taking note* of the existence of agreements referred to in Article 98-2 of the Rome Statute,

*Determining* that the situation in Sudan continues to constitute a threat to international peace and security,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Decides* to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court;
2. *Decides* that the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully;
3. *Invites* the Court and the African Union to discuss practical arrangements that will facilitate the work of the Prosecutor and of the Court, including the possibility of conducting proceedings in the region, which would contribute to regional efforts in the fight against impunity;
4. *Also encourages* the Court, as appropriate and in accordance with the Rome Statute, to support international cooperation with domestic efforts to promote the rule of law, protect human rights and combat impunity in Darfur;
5. *Also emphasizes* the need to promote healing and reconciliation and encourages in this respect the creation of institutions, involving all sectors of Sudanese society, such as truth and/or reconciliation commissions, in order to complement judicial processes and thereby reinforce the efforts to restore longlasting peace, with African Union and international support as necessary;
6. *Decides* that nationals, current or former officials or personnel from a contributing State outside Sudan which is not a party to the Rome Statute of the International Criminal Court shall be subject to the exclusive jurisdiction of that contributing State for all alleged acts or omissions arising out of or related to operations in Sudan established or authorized by the Council or the African Union, unless such exclusive jurisdiction has been expressly waived by that contributing State;

7. *Recognizes* that none of the expenses incurred in connection with the referral including expenses related to investigations or prosecutions in connection with that referral, shall be borne by the United Nations and that such costs shall be borne by the parties to the Rome Statute and those States that wish to contribute voluntarily;
8. *Invites* the Prosecutor to address the Council within three months of the date of adoption of this resolution and every six months thereafter on actions taken pursuant to this resolution;
9. *Decides* to remain seized of the matter.

# Various documents on recognition & statehood

## **Resolution 216 (1965) of the UN Security Council**

*The Security Council,*

1. Decides to condemn the unilateral declaration of independence made by a racist minority in Southern Rhodesia;
2. Decides to call upon all States not to recognize this illegal racist minority régime in Southern Rhodesia and to refrain from rendering any assistance to this illegal régime.

## **Resolution 277 (1970) of the UN Security Council**

*The Security Council,*

*Reaffirming* its resolutions 216 (1965) of 12 November 1965, 217 (1965) of 20 November 1965, 221 (1966) of 9 April 1966, 232 (1966) of 16 December 1966 and 253 (1968) of 29 May 1968,

*Reaffirming* that to the extent not superseded in the present resolution, the measures provided for in resolutions 217 (1965), 232 (1966) and 253 (1968), as well as those initiated by Member States in implementation of those resolutions, shall continue in effect,

*Taking into account* the reports of the Committee established in pursuance of Security Council resolution 253 (1968),

*Noting with grave concern* that:

- (a) The measures so far taken have failed to bring the rebellion in Southern Rhodesia to an end,

- (b) Some States, contrary to resolutions 232 (1966) and 253 (1968) of the Security Council and to their obligations under Article 25 of the Charter of the United Nations, have failed to prevent trade with the illegal régime of Southern Rhodesia,
- (c) The Governments of the Republic of South Africa and Portugal have continued to give assistance to the illegal régime of Southern Rhodesia, thus diminishing the effects of the measures decided upon by the Security Council,
- (d) The situation in Southern Rhodesia continues to deteriorate as a result of the introduction by the illegal régime of new measures, including the purported assumption of republican status, aimed at repressing the African people in violation of General Assembly resolution 1514 (XV) of 14 December 1960,

*Recognizing* the legitimacy of the struggle of the people of Southern Rhodesia to secure the enjoyment of their rights as set forth in the Charter and in conformity with the objectives of General Assembly resolution 1514 (XV),

*Reaffirming* that the present situation in Southern Rhodesia constitutes a threat to international peace and security,

*Acting* under Chapter VII of the Charter,

1. *Condemns* the illegal proclamation of republican status of the Territory by the illegal régime in Southern Rhodesia;
2. *Decides* that Member States shall refrain from recognizing this illegal régime or from rendering any assistance to it;
3. *Calls upon* Member States to take appropriate measures, at the national level, to ensure that any act performed by officials and institutions of the illegal régime in Southern Rhodesia shall not be accorded any recognition, official or otherwise, including judicial notice, by the competent organs of their State;
4. *Reaffirms* the primary responsibility of the Government of the United Kingdom of Great Britain and Northern Ireland to enable the people of Zimbabwe to exercise their right to self-determination and independence, in accordance with the Charter of the United Nations and in conformity with General Assembly resolution 1514 (XV), and urges that Government to discharge fully its responsibility;
5. *Condemns* all measures of political repression, including arrests, detentions, trials and executions, which violate fundamental freedoms and rights of the people of Southern Rhodesia;
6. *Condemns* the policies of the Governments of South Africa and Portugal, which continue to maintain political, economic, military, and other relations with the illegal régime in Southern Rhodesia in violation of the relevant resolutions of the United Nations;

7. *Demands* the immediate withdrawal of South African police and armed personnel from the Territory of Southern Rhodesia;
8. *Calls upon* Member States to take more stringent measures in order to prevent any circumvention by their nationals, organizations, companies and other institutions of their nationality, of the decisions taken by the Security Council in resolutions 232 (1966) and 253 (1968), all provisions of which shall fully remain in force;
9. *Decides*, in accordance with Article 41 of the Charter and in furthering the objective of ending the rebellion, that Member States shall:
  - (a) Immediately sever all diplomatic, consular, trade, military and other relations that they may have with the illegal régime in Southern Rhodesia, and terminate any representation that they may maintain in the Territory;
  - (b) Immediately interrupt any existing means of transportation to and from Southern Rhodesia;
10. *Requests* the Government of the United Kingdom, as the administering Power, to rescind or withdraw any existing agreements on the basis of which foreign consular, trade and other representation may at present be maintained in or with Southern Rhodesia;
11. *Requests* Member States to take all possible further action under Article 41 of the Charter to deal with the situation in Southern Rhodesia, not excluding any of the measures provided in that Article;
12. *Calls upon* Member States to take appropriate action to suspend any membership or associate membership that the illegal régime of Southern Rhodesia has in the specialized agencies of the United Nations;
13. *Urges* member States of any international or regional organizations to suspend the membership of the illegal régime of Southern Rhodesia from their respective organizations and to refuse any request for membership from that régime;
14. *Urges* Member States to increase moral and material assistance to the people of Southern Rhodesia in their legitimate struggle to achieve freedom and independence
15. *Requests* the specialized agencies and other international organizations concerned, in consultation with the Organization of African Unity, to give aid and assistance to refugees from Southern Rhodesia and those who are suffering from oppression by the illegal régime of Southern Rhodesia;
16. *Requests* Member States, the United Nations, the specialized agencies and other international organizations in the United Nations system to make an urgent effort to increase their assistance to Zambia as a matter of priority with a view to helping it solve such special economic problems as it may be confronted with arising from the carrying out of the decisions of the Security Council on this question;

17. *Calls upon* Member States, in particular those with primary responsibility under the Charter for the maintenance of international peace and security, to assist effectively in the implementation of the measures called for by the present resolution;
18. *Urges*, having regard to the principle stated in Article 2 of the Charter, States not Members of the United Nations to act in accordance with the provisions of the present resolution;
19. *Calls upon* Member States to report to the Secretary-General by 1 June 1970 on the measures taken to implement the present resolution;
20. *Requests* the Secretary-General to report to the Security Council on the progress of the implementation of the present resolution, the first report to be submitted no later than 1 July 1970,
21. *Decides* that the Committee of the Security Council established in pursuance of resolution 253 (1968), in accordance with rule 28 of the provisional rules of procedure of the Council, shall be entrusted with the responsibility of:
  - (a) Examining such reports on the implementation of the present resolution as will be submitted by the Secretary-General;
  - (b) Seeking from Member States such further information regarding the effective implementation of the provision laid down in the present resolution as it may consider necessary for the proper discharge of its duty to report to the Security Council;
  - (c) Studying ways and means by which Member States could carry out more effectively the decisions of the Security Council regarding sanctions against the illegal régime of Southern Rhodesia and making recommendations to the Council;
22. *Requests* the United Kingdom, as the administering Power, to continue to give maximum assistance to the Committee and to provide the Committee with any information it may receive in order that the measures envisaged in the present resolution as well as resolutions 232 (1966) and 253 (1968) may be rendered fully effective;
23. *Calls upon* Member States, as well as the specialized agencies, to supply such information as may be sought by the Committee in pursuance of the present resolution;
24. *Decides* to maintain this item on its agenda for further action as appropriate in the light of developments.

## **Resolution 514 (1983) of the UN Security Council**

*The Security Council,*

*Having heard* the statement of the Foreign Minister of the Government of the Republic of Cyprus,

*Concerned* at the declaration by the Turkish Cypriot authorities issued on 15 November 1983 which purports to create an independent state in northern Cyprus,

*Considering* that this declaration is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee,

*Considering* therefore that the attempt to create a “Turkish Republic of Northern Cyprus” is invalid, and will contribute to a worsening of the situation in Cyprus,

*Reaffirming* its resolutions 365(1974) and 367(1975),

*Aware* of the need of a solution to the Cyprus problem, based on the mission of good offices undertaken by the Secretary-General,

*Affirming* its continued support for the United Nations Peace-keeping Force in Cyprus,

*Taking note* of the Secretary-Generals statement of 17 November 1983,

1. *Deplores* the declaration of the Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus;
2. *Considers* the declaration referred to above as legally invalid and calls for its withdrawal;
3. *Calls* for the urgent and effective implementation of its resolutions 365(1974) and 367(1975);
4. *Requests* the Secretary-General to pursue his mission of good offices in order to achieve the earliest possible progress towards a just and lasting settlement in Cyprus;
5. *Calls* upon the parties to co-operate with the Secretary-General in his mission of good offices;
6. *Calls* upon all states to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus;
7. *Calls* upon all states not to recognise any Cypriot state other than the Republic of Cyprus;
8. *Calls* upon all states and the two communities in Cyprus to refrain from any action which might exacerbate the situation;
9. *Requests* the Secretary-General to keep the Security Council fully informed.

## Resolution 550 (1984) of the UN Security Council

*The Security Council,*

*Having considered* the situation in Cyprus at the request of the Government of the Republic of Cyprus,

*Having heard* the statement made by the President of the Republic of Cyprus,

*Taking note* of the report of the Secretary-General (S/16519),

*Recalling* its resolutions 365(1974), 367(1975), 541(1983) and 544(1983),

*Deeply regretting* the non-implementation of its resolutions, in particular resolution 541(1983),

*Gravely concerned* about the further secessionist acts in the occupied part of the Republic of Cyprus which are in violation of Resolution 541(1983), namely the purported “exchange of Ambassadors” between Turkey and the legally invalid “Turkish Republic of Northern Cyprus” and the contemplated holding of a “constitutional referendum” and “elections”, as well as by other actions aimed at further consolidating the purported independent state and the division of Cyprus,

*Deeply concerned* about recent threats for settlement of Varosha by people other than its inhabitants,

*Reaffirms* its support for the United Nations Peace-Keeping Force in Cyprus,

1. Reaffirming its resolution 541(1983) and calls for its urgent and effective implementation;
2. Condemns all secessionist actions, including the purported exchange of Ambassadors between Turkey and the Turkish Cypriot Leadership, declares them illegal and invalid and calls for their immediate withdrawal;
3. Reaffirms the call upon all States not to recognise the purported state of the “Turkish Republic of Northern Cyprus” set up by secessionist acts and calls upon them not to facilitate or in any way assist this the aforesaid secessionist entity;
4. Calls upon all States to respect the sovereignty, independence, territorial integrity, unity and non-alignment of the Republic of Cyprus; [...]

## Protocol No 10 on Cyprus<sup>1</sup>

THE HIGH CONTRACTING PARTIES,

<sup>1</sup>Attached to the EU Accession Treaty 2003.



REAFFIRMING their commitment to a comprehensive settlement of the Cyprus problem, consistent with relevant United Nations Security Council Resolutions, and their strong support for the efforts of the United Nations Secretary General to that end,

CONSIDERING that such a comprehensive settlement to the Cyprus problem has not yet been reached,

CONSIDERING that it is, therefore, necessary to provide for the suspension of the application of the *acquis* in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control,

CONSIDERING that, in the event of a solution to the Cyprus problem this suspension shall be lifted,

CONSIDERING that the European Union is ready to accommodate the terms of such a settlement in line with the principles on which the EU is founded,

CONSIDERING that it is necessary to provide for the terms under which the relevant provisions of EU law will apply to the line between the above mentioned areas and both those areas in which the Government of the Republic of Cyprus exercises effective control and the Eastern Sovereign Base Area of the United Kingdom of Great Britain and Northern Ireland,

DESIRING that the accession of Cyprus to the European Union shall benefit all Cypriot citizens and promote civil peace and reconciliation,

CONSIDERING, therefore, that nothing in this Protocol shall preclude measures with this end in view,

CONSIDERING that such measures shall not affect the application of the *acquis* under the conditions set out in the Accession Treaty in any other part of the Republic of Cyprus,

HAVE AGREED UPON THE FOLLOWING PROVISIONS:

#### **Article 1**

1. The application of the *acquis* shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.
2. The Council, acting unanimously on the basis of a proposal from the Commission, shall decide on the withdrawal of the suspension referred to in paragraph 1.

## Article 2

1. The Council, acting unanimously on the basis of a proposal from the Commission, shall define the terms under which the provisions of EU law shall apply to the line between those areas referred to in Article 1 and the areas in which the Government of the Republic of Cyprus exercises effective control.
2. The boundary between the Eastern Sovereign Base Area and those areas referred to in Article 1 shall be treated as part of the external borders of the Sovereign Base Areas for the purpose of Part IV of the Annex to the Protocol on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus for the duration of the suspension of the application of the *acquis* according to Article 1.

## Article 3

1. Nothing in this Protocol shall preclude measures with a view to promoting the economic development of the areas referred to in Article 1.
2. Such measures shall not affect the application of the *acquis* under the conditions set out in the Accession Treaty in any other part of the Republic of Cyprus.

## Article 4

In the event of a settlement, the Council, acting unanimously on the basis of a proposal from the Commission, shall decide on the adaptations to the terms concerning the accession of Cyprus to the European Union with regard to the Turkish Cypriot Community.

# Resolution 1244 (1999) of the UN Security Council

*The Security Council,*

*Bearing in mind* the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

*Recalling* its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998, 1203 (1998) of 24 October 1998 and 1239(1999) of 14 May 1999,

*Regretting* that there has not been full compliance with the requirements of these resolutions,

*Determined* to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes,

*Condemning* all acts of violence against the Kosovo population as well as all terrorist acts by any party,

*Recalling* the statement made by the Secretary-General on 9 April 1999, expressing concern at the humanitarian tragedy taking place in Kosovo,

*Reaffirming* the right of all refugees and displaced persons to return to their homes in safety,

*Recalling* the jurisdiction and the mandate of the International Tribunal for the Former Yugoslavia,

*Welcoming* the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the Federal Republic of Yugoslavia of the principles set forth in points 1 to 9 of the paper presented in Belgrade on 2 June 1999 (S/1999/649, annex 2 to this resolution), and the Federal Republic of Yugoslavia's agreement to that paper,

*Reaffirming* the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2,

*Reaffirming* the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo,

*Determining* that the situation in the region continues to constitute a threat to international peace and security,

*Determined* to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and *acting* for these purposes under Chapter VII of the Charter of the United Nations,

1. *Decides* that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2;
2. *Welcomes* the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements referred to in paragraph 1 above, and *demands* the full cooperation of the Federal Republic of Yugoslavia in their rapid implementation;
3. *Demands* in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized;

4. *Confirms* that after the withdrawal an agreed number of Yugoslav and Serb military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2;
5. *Decides* on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the Federal Republic of Yugoslavia to such presences;
6. *Requests* the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and *further requests* the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;
7. *Authorizes* Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;
8. *Affirms* the need for the rapid early deployment of effective international civil and security presences to Kosovo, and *demands* that the parties cooperate fully in their deployment;
9. *Decides* that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:
  - (a) Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;
  - (b) Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below;
  - (c) Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;
  - (d) Ensuring public safety and order until the international civil presence can take responsibility for this task;
  - (e) Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task;
  - (f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence;
  - (g) Conducting border monitoring duties as required;

- (h) Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations;
10. *Authorizes* the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;
11. *Decides* that the main responsibilities of the international civil presence will include:
- (a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);
  - (b) Performing basic civilian administrative functions where and as long as required;
  - (c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;
  - (d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;
  - (e) Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);
  - (f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;
  - (g) Supporting the reconstruction of key infrastructure and other economic reconstruction;
  - (h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;
  - (i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;
  - (j) Protecting and promoting human rights;
  - (k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;
12. *Emphasizes* the need for coordinated humanitarian relief operations, and for the Federal Republic of Yugoslavia to allow unimpeded access to Kosovo by humanit-

- arian aid organizations and to cooperate with such organizations so as to ensure the fast and effective delivery of international aid;
13. *Encourages* all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons, and *emphasizes* in this context the importance of convening an international donors' conference, particularly for the purposes set out in paragraph 11 (g) above, at the earliest possible date;
  14. *Demands* full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia;
  15. *Demands* that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General;
  16. *Decides* that the prohibitions imposed by paragraph 8 of resolution 1160 (1998) shall not apply to arms and related *matériel* for the use of the international civil and security presences;
  17. *Welcomes* the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation;
  18. *Demands* that all States in the region cooperate fully in the implementation of all aspects of this resolution;
  19. *Decides* that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;
  20. *Requests* the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;
  21. *Decides* to remain actively seized of the matter.

### **Annex 1**

Statement by the Chairman on the conclusion of the meeting of the G-8 Foreign Ministers held at the Petersberg Centre on 6 May 1999

The G-8 Foreign Ministers adopted the following general principles on the political solution to the Kosovo crisis:

- Immediate and verifiable end of violence and repression in Kosovo;
- Withdrawal from Kosovo of military, police and paramilitary forces;
- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;
- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;
- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA;
- Comprehensive approach to the economic development and stabilization of the crisis region.

## **Annex 2**

Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:

1. An immediate and verifiable end of violence and repression in Kosovo.
2. Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.
3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.
4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.

5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.
6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:
  - Liaison with the international civil mission and the international security presence;
  - Marking/clearing minefields;
  - Maintaining a presence at Serb patrimonial sites;
  - Maintaining a presence at key border crossings.
7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.
8. A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.
9. A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.
10. Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements, which are specified in the footnote below.<sup>1</sup> A military-technical agreement will

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<sup>1</sup>Other required elements:

- A rapid and precise timetable for withdrawals, meaning, e.g., seven days to complete withdrawal and air defence weapons withdrawn outside a 25 kilometre mutual safety zone within 48 hours;
- Return of personnel for the four functions specified above will be under the supervision of the international security presence and will be limited to a small agreed number (hundreds, not thousands);
- Suspension of military activity will occur after the beginning of verifiable withdrawals;



then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo:

*Withdrawal*

- Procedures for withdrawals, including the phased, detailed schedule and delineation of a buffer area in Serbia beyond which forces will be withdrawn;

*Returning personnel*

- Equipment associated with returning personnel;
- Terms of reference for their functional responsibilities;
- Timetable for their return;
- Delineation of their geographical areas of operation;
- Rules governing their relationship to the international security presence and the international civil mission.

## **Letter from the President and Prime Minister of the Republic of Kosovo, Dated 17 February 2008, sent to all UN members**

Dear Minister [...]:

You will know that on 17 February, 2008 the Assembly of Kosovo declared Kosovo's independence. We attach a copy of the full text of that declaration. We want to underline to you that with this declaration we have irrevocably committed Kosovo to the full implementation of all obligations contained in the Comprehensive Proposal of the UN Special Envoy, including of course a multi-ethnic, democratic future for Kosovo, protection of the rights of all Kosovo's communities and to all provisions concerning the international supervision of Kosovo.

Once a period of public consultation has taken place we shall enact our new Constitution, but we can assure you unequivocally that this will fully and faithfully reflect the Comprehensive Proposal of UN Special Envoy. We are glad to be working closely with the International Civilian Office Planning Team as the Constitution text is finalized.

We reaffirm clearly, specifically and irrevocably that Kosovo shall be legally bound to comply with the provisions contained in our Declaration, and that your government is entitled to rely upon this affirmation.

The Government of the Republic of Kosovo looks forward to close and beneficial links with all our neighbors, all EU Member States, and indeed all sovereign nations around the world. With this letter we are formally inviting the Government of the Republic of [...] to recognize the Republic of Kosovo as an independent state and to

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- The discussion and achievement of a military-technical agreement shall not extend the previously determined time for completion of withdrawals.

establish full diplomatic relations, and diplomatic mission, on the basis of the Vienna Convention on Diplomatic Relations. We should be grateful if you would confirm whether these proposals are acceptable to the Government of the Republic of [...].

Sincerely,

Fatmir Sejdiu, President of the Republic of Kosovo

Hashim Thaçi, Prime Minister of the Republic of Kosovo

## **Norwegian Royal Decree adopted by the King in Council on 28 March 2008**

MINISTRY OF FOREIGN AFFAIRS

ROYAL DECREE

Minister of Foreign Affairs Jonas Gahr Støre

RECOGNITION OF THE REPUBLIC OF KOSOVO AS AN INDEPENDENT STATE  
SPECIFICATION OF GROUNDS

### **1. Background**

In 1974 Kosovo became an autonomous province of the Republic of Serbia. This status was specified in the constitution of the Socialist Federal Republic of Yugoslavia of the same year. The extensive autonomy it thereby acquired was brought to an end in 1989, under President Milosevic, and this led to an increase in ethnic unrest. The conflicts in Yugoslavia in the early 1990s resulted in the disintegration of the Socialist Federal Republic of Yugoslavia. In 1989 the situation in Kosovo was put on the agenda of the UN Security Council because of widespread violence against the Kosovo Albanian population. Following NATO's intervention in 1999, the Security Council adopted resolution 1244, which required an international civilian presence under the auspices of the UN and an international military presence under NATO leadership (KFOR). Whereas the latter was to ensure security and stability, the civilian presence, led by UNMIK, was to help during a transitional period to develop civilian structures and capacity for a multiethnic Kosovo within the framework of the Federal Republic of Yugoslavia.

Since 1999 the Serbian authorities have not exercised authority or control over the territory of Kosovo, which has been entirely under international administration combined with self-governance arrangements pending further clarification. Kosovo has a population of about 2 million, of which more than 90% are ethnic Albanians.

In 2005 the issue of Kosovo's final status was put on the Security Council's agenda, as recommended in the report produced by the Norwegian Kai Eide on behalf of the UN Secretary-General. Former Finnish President Martti Ahtisaari was appointed as UN Special Envoy for this task. In February 2007, after long, fruitless consultations with the parties, he presented a proposal for a settlement, which is known as the Ahtisaari Plan. It was endorsed by the UN Secretary-General and submitted to the UN Security

Council on 26 March 2007 (UN Doc. S/2007/168). The Security Council was, however, unable to reach agreement on the plan.

## **2. The proposals and conditions set out in the Ahtisaari plan**

The clarification of Kosovo's status is considered to be of fundamental importance for international peace and security in the region. Continuing uncertainty about the territory's status is an obstacle to Kosovo's democratic development, political accountability, economic recovery and reconciliation. Continuing uncertainty would lead to further stagnation, polarisation between ethnic groups, and social and political unrest.

In spite of extensive international efforts, no alternative to independence for the territory has been identified if the aim is to ensure a politically stable and economically viable Kosovo. Only within the framework of an independent state can democratic institutions be held fully accountable for good governance and the effective protection of minorities in accordance with constitutional guarantees. Critical areas here are minority rights, decentralisation, the protection of the Serbian Orthodox Church in Kosovo and the principles of the rule of law. In the light of the fact that Kosovo's capacity to deal with all of these challenges remains limited, continued international assistance and supervision is considered necessary, for the time being through an international civilian and military presence. Notwithstanding this international involvement, Kosovo's authorities will ultimately be responsible and accountable for the implementation of the Settlement proposal.

It is considered that every possible means of achieving a negotiated settlement has been exhausted. Following renewed debate in the Security Council, further negotiations between the parties were held towards the end of 2007 under the auspices of a troika originating from the Kosovo Contact Group. However, the situation remained deadlocked, and it has not been possible to reach agreement in the Security Council either.

## **3. The declaration of independence of 17 February 2008**

On 17 February 2008 the democratically elected Assembly of Kosovo adopted a declaration of independence for the Republic of Kosovo. It is explicitly based on all the conditions set out in the Ahtisaari Plan, and it emphasises in Section 3 that the new state fully accepts the obligations for Kosovo contained in the plan. The Ahtisaari Plan, together with the principles set out in the European Convention on Human Rights, will also form the basis for a new constitution. The declaration expresses that Kosovo needs and welcomes the international community's continued support. The new state declares its intention to take all steps necessary to facilitate membership in the European Union, as well as Euro-Atlantic integration. The declaration of independence was communicated to the Norwegian Government, among others, by the Head of State and Prime Minister [corr. in transl.] of the proclaimed state. Under public international law, there are grounds for considering such a communication, together

with the enclosed document, as a binding unilateral declaration in connection with the recognition of a new state.

At a Council meeting on 18 February 2008, the EU Foreign Ministers issued a joint statement, in which they recalled the European Union's longstanding commitment to the stability of the Western Balkan region and reiterated the European Union's readiness to play a leading role in strengthening stability in the region. The statement underlined that in view of the conflict of the 1990s and the extended period of international administration, Kosovo constitutes a *sui generis* case.

On the basis of Security Council resolution 1244, the North Atlantic Council has declared that the KFOR troops are to remain in Kosovo unless otherwise determined by the UN Security Council. The Alliance also underlines its responsibility for safeguarding the security of the people of Kosovo, and of the ethnic minorities in particular.

As of 25 March 2008, 32 states have recognised Kosovo as an independent state. These include all other Nordic countries and the majority of EU and NATO member states.

#### **4. Assessment**

Due to the lack of an agreement between the parties and any decision by the UN Security Council clarifying the question of Kosovo's final status, the situation in Kosovo raises particular political questions as well as questions of international law.

Kosovo's self-government authorities have requested Norway and the rest of the world to recognise Kosovo as an independent state. Norway has remained in close contact with Serbia, like-minded countries in the EU and other Nordic countries regarding the question of recognition. Norway wishes to maintain its close relations and cooperation with Serbia, which have been developed over many years.

The Government considers the need for a prompt clarification of Kosovo's status and the provisions regarding the protection of minorities and of the Serbian Orthodox Church in Kosovo to be of great importance. It should also be noted that following the Security Council's deliberations, renewed, but fruitless, efforts have been undertaken to reach a negotiated solution between the parties or agreement in the Security Council.

Since 1999 the territory has not been controlled or governed by Serbia. Security Council resolution 1244 does not take a position on the question of Kosovo's final status under international law. It would have been preferable if the Security Council had been able to agree on a solution, but the current lack of such a decision does not relieve the UN member states of responsibility for promoting peace and security, democratic and economic development and respect for human rights, in accordance with Security Council resolution 1244.

Under international law, it is not recognition that creates a new state. However, recognition by another state provides a legal clarification of the relationship between the recognising state and the state it has recognised. The provisions of international

law concerning the recognition of states require that an assessment be made of factual circumstances as regards territory, population, governance structure and this government's legal capacity in relation to other states. Emphasis is given to the fact that a large number of states consider these requirements to be fulfilled in Kosovo's case. These include key donor countries and contributors to the international military and civilian presence in the area, which has for a long time played a decisive role in maintaining and promoting peace and security in this area.

According to Article 2(6) of the UN Charter, even a state that is not a member of the UN has the obligation to act in accordance with the principles of the Charter so far as may be necessary for the maintenance of international peace and security, and it must also comply with Security Council resolutions including resolution 1244. This resolution provides the basis for the international presence in Kosovo until the Security Council decides otherwise. In its overall assessment, the Government places great emphasis on the guarantees provided in connection with the communication of the declaration of independence of 17 February 2008. These guarantees are formulated as a declaration that is binding under international law as regards constitutional and other guarantees related to the protection of minorities and of the Serbian Orthodox Church in Kosovo. These guarantees must be considered to be among the grounds for recognition.

The overall assessment is also based on the fact that the situation in Kosovo constitutes a *sui generis* case. The conflict in 1999 and the fact that Kosovo has been under international administration ever since are unique circumstances.

It is not expected that recognition of Kosovo will have any significant administrative or economic consequences, even when a reorganisation of Norway's diplomatic representation in the area is taken into account.

On the basis of the above it is recommended that Norway recognise the Republic of Kosovo as an independent state and establish diplomatic relations with the authorities in Pristina. It is further recommended that Norway declare that the letter of 17 February 2008 and the enclosed declaration of independence of the same date be considered as a declaration that is binding under international law as regards the fulfilment of the therein provided guarantees related to community rights and the protection of the Serbian Orthodox Church in Kosovo and the rules of international law referred to in the declaration of independence.

The Ministry of Foreign Affairs

recommends that:

1. Norway recognise the Republic of Kosovo as an independent state.
2. When the authorities in Kosovo are informed of this, a declaration be made to the effect that their letter of 17 February 2008 and the enclosed declaration of independence of the same date be considered as a declaration that is binding under international law as regards the fulfilment of the therein provided guarantees related to

community rights and the protection of the Serbian Orthodox Church in Kosovo and the rules of international law referred to in the declaration of independence.

### **Russian Federation, Decree No 1260 on the Recognition of the Republic of Abkhazia, 26 August 2008**

1. In the light of the expression of the free will of the Abkhaz people to recognize the Republic of Abkhazia as a sovereign and independent State;
2. The Ministry for Foreign Affairs of the Russian Federation is to hold negotiations with the Abkhaz side on the establishment of diplomatic relations and on the agreement to prepare the appropriate documents;
3. The Minister for Foreign Affairs of the Russian Federation is authorized to hold, with the participation of interested federal bodies and executive authorities, negotiations with the Abkhaz side on the preparation of a draft treaty on friendship, cooperation and mutual assistance, and to submit those documents in the proper order for signature;
4. In connection with the appeal of the President of the Republic of Abkhazia to the Ministry of Defence of the Russian Federation to ensure, before the conclusion of the treaty in paragraph three of this decree, the implementation by the armed forces of the Russian Federation of peacekeeping functions on the territory of the Republic of Abkhazia.

### **Joint Statement on Georgia by Foreign Ministers of Canada, France, Germany, Italy, Japan, the United States and the United Kingdom, 27 August 2008**

We, the Foreign Ministers of Canada, France, Germany, Italy, Japan, the United States and the United Kingdom, condemn the action of our fellow G8 member. Russia's recognition of the independence of South Ossetia and Abkhazia violates the territorial integrity and sovereignty of Georgia and is contrary to UN Security Council Resolutions supported by Russia. Russia's decision has called into question its commitment to peace and security in the Caucasus.

We deplore Russia's excessive use of military force in Georgia and its continued occupation of parts of Georgia. We call unanimously on the Russian government to implement in full the six point peace plan brokered by President Sarkozy on behalf of the EU, in particular to withdraw its forces behind the pre- conflict lines. We reassert our strong and continued support for Georgia's sovereignty within its internationally recognized borders and underline our respect and support for the democratic and legitimate government of Georgia as we pursue a peaceful, durable solution to this conflict.

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## Montevideo Convention on the Rights and Duties of States 1933

The Governments represented in the Seventh International Conference of American States: Wishing to conclude a Convention on Rights and Duties of States, have appointed the following Plenipotentiaries: [...]

Who, after having exhibited their Full Powers, which were found to be in good and due order, have agreed upon the following:

### Article 1

The state as a person of international law should possess the following qualifications:

- a) a permanent population;
- b) a defined territory;
- c) government; and
- d) capacity to enter into relations with the other states. [...]

### Article 2

The federal state shall constitute a sole person in the eyes of international law.

### Article 3

The political independence of the states is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.

The exercise of these rights have no other limitations than the exercise of the rights of other states according to international law.

### Article 4

States are juridically equal, enjoy the same rights, and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.

### Article 5

The fundamental rights of states are not susceptible of being affected in any manner whatsoever.

**Article 6**

The recognition of a state merely signifies that the state which recognizes it accepts the personality of the other with all the rights and duties determined by international law. Recognition is unconditional and irrevocable.

**Article 7**

The recognition of a state may be express or tacit. The latter results from any act which implies the intention of recognizing the new state.

**Article 8**

No state has the right to intervene in the internal or external affairs of another.

**Article 9**

The jurisdiction of states within the limits of national territory applies to all the inhabitants. Nationals and foreigners are under the same protection of the law and the national authorities and the foreigners may not claim rights other or more extensive than those of the nationals.

**Article 10**

The primary interest of states is the conservation of peace. Differences of any nature which arise between them should be settled by recognized pacific methods.

**Article 11**

The contracting states definitely establish as the rule of their conduct the precise obligation not to recognize territorial acquisitions or special advantages which have been obtained by force whether this consists in the employment of arms, in threatening diplomatic representations or in any other effective coercive measure. The territory of a state is inviolable and may not be the object of military occupation or of other measures of force imposed by another state directly or indirectly or for any motive whatever even temporarily.

**Article 12**

The present Convention shall not affect obligations previously entered into by the High Contracting Parties by virtue of international agreements.



**Article 13**

The present Convention shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures. The Minister of Foreign Affairs of the Republic of Uruguay shall transmit authentic certified copies to the governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington, which shall notify the signatory governments of said deposit. Such notification shall be considered as an exchange of ratifications.

**Article 14**

The present Convention will enter into force between the High Contracting Parties in the order in which they deposit their respective ratifications.

**Article 15**

The present Convention shall remain in force indefinitely but may be denounced by means of one year's notice given to the Pan American Union, which shall transmit it to the other signatory governments. After the expiration of this period the Convention shall cease in its effects as regards the party which denounces but shall remain in effect for the remaining High Contracting Parties.

**Article 16**

The present Convention shall be open for the adherence and accession of the States which are not signatories. The corresponding instruments shall be deposited in the archives of the Pan American Union which shall communicate them to the other High Contracting Parties.

IN WITNESS WHEREOF, the following Plenipotentiaries have signed this Convention in Spanish, English, Portuguese and French and hereunto affix their respective seals in the city of Montevideo, Republic of Uruguay, this 26th day of December, 1933.

## **Institut de Droit International Law, Resolutions Concerning the Recognition of New States and New Governments 1936**

### **A. NEW STATES**

**Article 1**

The recognition of a new State is the free act by which one or more States acknowledge the existence on a definite territory of a human society politically organized, independent of any other existing State, and capable of observing the obligations of

international law, and by which they manifest therefore their intention to consider it a member of the international Community.

Recognition has a declaratory effect.

The existence of a new State with all the juridical effects which are attached to that existence, is not affected by the refusal of recognition by one or more States.

#### **Article 2**

Recognition emanates from the authority competent, according to the public law of the State, to represent it in foreign relations.

#### **Article 3**

Recognition is either definite and complete (*de jure*), or provisional or limited to certain juridical relations (*de facto*).

#### **Article 4**

Recognition “*de jure*” results either from an express declaration or from a positive act indicating clearly the intention to grant this recognition, such as the establishment of diplomatic relations. In the absence of such declaration or act, recognition shall not be considered to have been acquired. [...]

#### **Article 8**

The recognition of a State implies, eventually, within the limits fixed by the act, the recognition of the competence of the administrative, judicial, or other authorities of the new State, according to the rules of international law.

#### **Article 9**

Recognition “*de facto*” results either from an express declaration or from an act implying this intention, such as an agreement or *modus vivendi* having a limited purpose or a provisional character.

### **B. NEW GOVERNMENTS**

#### **Article 10**

The recognition of the new government of a State which has been already recognized is the free act by which one or several States acknowledge that a person or group of persons are capable of binding the State which they claim to represent, and witness their intention to enter into relations with them.

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## **Declaration on the “Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union” of 16 December 1991**

In compliance with the European Council’s request, Ministers have assessed developments in Eastern Europe and the Soviet Union with a view to elaborating an approach regarding relations with new states.

In this connection they have adopted the following guidelines on the formal recognition of new states in Eastern Europe and in the Soviet Union:

The Community and its Member States confirm their attachment to the principles of the Helsinki Final Act and the Charter of Paris, in particular the principle of self-determination. They affirm their readiness to recognize, subject to the normal standards of international practice and the political realities in each case, those new States which, following the historic changes in the region, have constituted themselves on a democratic basis, have accepted the appropriate international obligations and have committed themselves in good faith to a peaceful process and to negotiations.

Therefore, they adopt a common position on the process of recognition of these new States, which requires:

- respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights
- guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the C S C E
- respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement
- acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability
- commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning State succession and regional disputes.

The Community and its Member States will not recognize entities which are the result of aggression. They would take account of the effects of recognition on neighbouring States.

The commitment to these principles opens the way to recognition by the Community and its Member States and to the establishment of diplomatic relations. It could be laid down in agreements.

## The President's of the Russian Federation letter to the UN Secretary-General

Moscow, 24 December 1991

Sir,

I have the honour to inform you that the membership of the Union of Soviet Socialist Republics in the United Nations, including the Security Council and all other organs and organizations of the United Nations system, is being continued by the Russian Federation (RSFSR) with the support of the countries of the Commonwealth of Independent States. In this connection, I request that the name "the Russian Federation" should be used in the United Nations in place of the name "the Union of Soviet Socialist Republics".

The Russian Federation maintains full responsibility for all the rights and obligations of the USSR under the Charter of the United Nations, including the financial obligations.

I request you to consider this letter as confirmation of the credentials to represent the Russian Federation in the United Nations organs for all the persons currently holding the credentials of representatives of the USSR to the United Nations.

Accept, Sir, the assurances of my highest consideration.

(signed)  
B. Yeltsin

## Telegram about independence of Poland<sup>1</sup>

Do P. Prezydenta Stanów Zjednoczonych,  
Do Królewskiego Rządu Angielskiego,  
Do Rządu Rzeczypospolitej Francuskiej,  
Do Królewskiego Rządu Włoskiego,  
Do Cesarskiego Rządu Japońskiego,  
Do Rządu Rzeczypospolitej Niemieckiej i do Rządów wszystkich Państw wojujących i neutralnych

Jako Wódz Naczelny Armii Polskiej, pragnę notyfikować rządowi i narodom wojującym i neutralnym istnienie Państwa Polskiego Niepodległego, obejmującego wszystkie ziemie zjednoczonej Polski.

Sytuacja polityczna w Polsce i jarzmo okupacji nie pozwoliły dotychczas narodowi polskiemu wypowiedzieć się swobodnie o swym losie. Dzięki zmianom, które

<sup>1</sup>Taken from "Wiek XX w źródłach", PWN 2002.

nastąpiły wskutek świetnych zwycięstw armii sprzymierzonych – wznowienie niepodległości i suwerenności Polski staje się odtąd faktem dokonanym.

Państwo Polskie powstaje z woli całego narodu i opiera się na podstawach demokratycznych. Rząd Polski zastąpi panowanie przemocy, która przez sto czterdzieści lat ciążyła nad losami Polski – przez ustrój, zbudowany na porządku i sprawiedliwości.

Opierając się na Armii Polskiej pod moją komendą, mam nadzieję, że odtąd żadna armia obca nie wkroczy do Polski, nim nie wyrazimy w tej sprawie formalnej woli naszej. Jestem przekonany, że potężne demokracje Zachodu udzielą swej pomocy i braterskiego poparcia Polskiej Rzeczypospolitej Odrodzonej i Niepodległej.

Wódz Naczelny      Za Ministra Spraw Zagranicznych  
Piłsudski            Filipowicz

Warszawa, 16 XI 1918 r.

## **Control Council Law No. 46 Abolition of the State of Prussia**

The Prussian State which from early days has been a bearer of militarism and reaction in Germany has *de facto* ceased to exist.

Guided by the interests of preservation of peace and security of peoples and with the desire to assure further reconstruction of the political life of Germany on a democratic basis, the Control Council enacts as follows:

### **Article I**

The Prussian State together with its central government and all its agencies is abolished.

### **Article II**

Territories which were a part of the Prussian State and which are at present under the supreme authority of the Control Council will receive the status of Laender or will be absorbed into laender.

The provisions of this Article are subject to such revision and other provisions as may be agreed upon by the Allied Control Authority, or as may be laid down in the future Constitution of Germany.

### **Article III**

The State and administrative functions as well as the assets and liabilities of the former Prussian State will be transferred to appropriate laender, subject to such agreements as may be necessary and made by the Allied Control Authority.

**Article IV**

This law becomes effective on the day of its signature.

Done at Berlin on 25 February 1947.

## Lateran Pacts 1929 – Conciliation Treaty<sup>1</sup>

### TREATY BETWEEN THE HOLY SEE AND ITALY IN THE NAME OF THE MOST HOLY TRINITY

Whereas:

The Holy See and Italy have recognized the desirability of eliminating every existing reason for dissension between them by arriving at a definitive settlement of their reciprocal relations, one which is consistent with justice and with the dignity of the two Parties and which, by assuring to the Holy See in a permanent manner a position in fact and in law which guarantees it absolute independence for the fulfilment of its exalted mission in the world, permits the Holy See to consider as finally and irrevocably settled the “Roman Question”, which arose in 1870 by the annexation of Rome to the Kingdom of Italy under the Dynasty of the House of Savoy;

Since, in order to assure the absolute and visible independence of the Holy See, it is required that it be guaranteed an indisputable sovereignty even in the international realm, it has been found necessary to create under special conditions Vatican City, recognizing the full ownership and the exclusive and absolute power and sovereign jurisdiction of the Holy See over the same;

His Holiness the Supreme Pontiff Pius XI and His Majesty Victor Emanuel III King of Italy have agreed to conclude a Treaty, appointing for that purpose two Plenipotentiaries, namely, on behalf of His Holiness, His Eminence Cardinal Pietro Gasparri, his Secretary of State, and on behalf of His Majesty, His Excellency Sir Benito Mussolini, Prime Minister and Head of Government; which persons, having exchanged their respective full powers, which were found to be in due and proper form, have agreed upon the following articles:

#### **Art. 1**

Italy recognizes and reaffirms the principle established in the first Article of the Statute of the Kingdom of 4 March 1848, according to which the Catholic, Apostolic and Roman Religion is the only religion of the State.

#### **Art. 2**

Italy recognizes the sovereignty of the Holy See in the international realm as an attribute inherent in its nature in conformity with its tradition and with the requirements of its mission to the world.

<sup>1</sup>See: [http://www.vaticanstate.va/EN/State\\_and\\_Government/Judicialgoverningbodies/Laws\\_and\\_decrees.htm](http://www.vaticanstate.va/EN/State_and_Government/Judicialgoverningbodies/Laws_and_decrees.htm).

**Art. 3**

Italy recognizes the full ownership and the exclusive and absolute power and jurisdiction of the Holy See over the Vatican as it is presently constituted, together with all its appurtenances and endowments, creating in this manner Vatican City for the special purposes and under the conditions given in this Treaty.

The boundaries of the said City are set forth in the map which constitutes Attachment I of the present Treaty, of which it is forms an integral part.

It remains understood that St. Peter's Square, although forming part of Vatican City, will continue to be normally open to the public and to be subject to the police power of the Italian authorities, who will stop at the foot of the steps leading to the Basilica, although the latter will continue to be used for public worship, and they will, therefore, abstain from mounting the steps and entering the said Basilica, unless they are asked to intervene by the competent authority.

Whenever the Holy See consider it necessary, for the purpose of particular functions, to close St. Peter's Square temporarily to the free passage of the public, the Italian authorities will withdraw beyond the outer lines of Bernini's Colonnade and their extension, unless they have been asked to remain by the competent authority.

**Art. 4**

The sovereignty and exclusive jurisdiction over Vatican City which Italy recognizes as pertaining to the Holy See means that within the same City there cannot be any interference on the part of the Italian Government and that there is no other authority there than that of the Holy See.

**Art. 5**

In order to put the provisions of the preceding Article into effect, before the present Treaty comes into force the Italian Government will see to it that the territory forming Vatican City is freed from every lien and from possible occupants. The Holy See will arrange to close the means of access to the City, enclosing the open parts, except St. Peter's Square. It is furthermore agreed that, in respect of the buildings existing there and belonging to religious institutes or entities, the Holy See will make provisions directly to regulate its relations with them, with the Italian State abstaining from any involvement.

**Art. 6**

Italy will see to it, by means of agreements made with the entities concerned, that an adequate supply of the water in its possession is fully assured to Vatican City.

Italy will furthermore provide for connection with the State railways by constructing a railway station within Vatican City, in the location indicated on the attached map (Attachment I), and by permitting the movement of railway vehicles belonging to the Vatican on the Italian railways.



It will further provide for the connection, even directly with other States, of the telegraph, telephone, radiotelegraph, radiotelephone, broadcasting, and postal services in Vatican City.

Finally, it will also provide for the coordination of other public services.

All the provisions just mentioned will be made at the expense of the Italian State and within the period of one year from the entry into force of the present Treaty.

The Holy See, at its own expense, will see to the arrangement of the existing means of access to the Vatican, and those others which it may consider necessary to open in the future.

Agreements will be subsequently concluded between the Holy See and Italy concerning the circulation, on and over Italian territory, of land vehicles and aircraft belonging to Vatican City.

#### **Art. 7**

The Italian Government undertakes not to permit the construction within the territory surrounding Vatican City of any new buildings which have a view into the Vatican, and for the same purpose undertakes to provide for the partial demolition of such buildings already standing, from the Porta Cavalleggeri and along the Via Aurelia and the Viale Vaticano.

In accordance with the provisions of International Law, it is forbidden for aircraft of any kind whatsoever to fly over the territory of the Vatican.

In Piazza Rusticucci and in the areas adjoining the Colonnade, wherever the extra-territoriality referred to in Art. 15 does not extend, any alterations of buildings or streets that could affect Vatican City will be effected by mutual agreement.

#### **Art. 8**

Italy, considering the person of the Supreme Pontiff to be sacred and inviolable, declares that any attempt against his person or any incitement to commit such an attempt is punishable by the same penalties as all similar attempts and incitements to commit the same against the person of the King.

Offences and public insults committed within Italian territory against the person of the Supreme Pontiff, whether by means of speech, deeds or writing, are punished in the same manner as offences and insults against the person of the King.

#### **Art. 9**

In accordance with the provisions of International Law, all persons having permanent residence within Vatican City are subject to the sovereignty of the Holy See. Such residence is not lost by reason of the mere fact of temporary residence elsewhere, unless accompanied by the loss of a dwelling place in the City itself or by other circumstances proving that such residence has been abandoned.

On ceasing to be subject to the sovereignty of the Holy See, the persons referred to in the preceding paragraph who, according to the provisions of Italian law, independently of the factual circumstances considered above, are not to be considered as possessing another citizenship, will be regarded in Italy as certainly being Italian citizens.

While such persons are subject to the sovereignty of the Holy See, the provisions of Italian legislation will be applicable to them within the territory of the Kingdom of Italy, even in those matters wherein personal law must be observed (when such matters are not regulated by rules issued by the Holy See) and, in the case of persons considered to possess another citizenship, the legislative provisions of the State to which they belong.

#### **Art. 10**

The dignitaries of the Church and the persons belonging to the Papal Court, who will be indicated in a list to be agreed upon by the Contracting Parties, will always and in every case, even when not citizens of the Vatican, be exempt, as far as Italy is concerned, from military service, jury duty, and any other obligation of a personal nature.

This provision also applies to regular officials whose services are declared to be indispensable by the Holy See, who are permanently employed with fixed salary by the offices of the Holy See as well as the Dicasteries and Offices to be indicated in Articles 13, 14, 15, and 16, existing outside of Vatican City. The names of such officials will be set forth in another list to be agreed upon as above mentioned, and which will be brought up to date each year by the Holy See.

Ecclesiastics who, for reasons of office, participate outside Vatican City in the issuance of enactments of the Holy See are not subject, on that account, to any hindrance, investigation, or disturbance on the part of the Italian authorities.

Every foreign person holding an ecclesiastical office in Rome enjoys the personal guarantees belonging to Italian citizens in virtue of the laws of the Kingdom.

#### **Art. 11**

The central entities of the Catholic Church are exempt from any interference on the part of the Italian State (except as provided by Italian law in regard to acquisitions made by corporate persons) and from conversion with regard to real estate.

#### **Art. 12**

Italy recognizes the right of the Holy See to active and passive Legation, according to the general rules of International Law.

Envoys of foreign Governments to the Holy See continue to enjoy, within the Kingdom, all the prerogatives and immunities enjoyed by diplomatic agents under International Law, and their headquarters may continue to remain within Italian ter-

ritory enjoying the immunities due them under International Law, even if their States do not have diplomatic relations with Italy.

It is understood that Italy commits itself to leave free always and in every case the correspondence from all States, including belligerents, to the Holy See and vice versa, as well as to allow free access to the Apostolic See by Bishops from all over the world.

The Contracting Parties commit themselves to establish normal diplomatic relations between them, by means the accreditation of an Italian Ambassador to the Holy See and of a Papal Nuncio to Italy, who will be the Dean of the Diplomatic Corps, in accordance with the customary right recognized by the Congress of Vienna by the Act of 9 June 1815.

In consequence of the sovereignty hereby recognized and without prejudice to the provisions established by Article 19 hereafter, the diplomats of the Holy See and the diplomatic couriers dispatched in the name of the Supreme Pontiff enjoy within Italian territory, even in time of war, the same treatment as that enjoyed by diplomatic personages and official couriers of other foreign Governments, according to the provisions of International Law.

#### **Art. 13**

Italy recognizes the full ownership of the Holy See over the patriarchal Basilicas of St. John Lateran, Saint Mary Major and St. Paul, with their annexed buildings (Attachment II, 1, 2 and 3).

The State transfers to the Holy See the free management and administration of said Basilica of St. Paul and its attached Monastery, also paying over to the Holy See the sum of capital corresponding to the sums set aside annually for that Basilica in the budget of the Ministry of Education.

It is likewise understood that the Holy See is the free owner of its dependent building of San Callisto, adjoining Santa Maria in Trastevere (Attachment II, 9).

#### **Art. 14**

Italy recognizes the full ownership by the Holy See of the Papal Palace of Castel Gandolfo, together with all endowments, appurtenances, and dependencies thereof (Attachment II, 4), which are now already in the possession of the Holy See, and Italy also obliges itself to hand over to the Holy See, within six months after the coming into force of the present Treaty, Villa Barberini in Castel Gandolfo, together with all endowments, appurtenances, and dependencies thereof (Attachment II, 5).

In order to consolidate the ownership of the real estate situated on the northern side of the Janiculum Hill belonging to the Sacred Congregation of Propaganda Fide and other ecclesiastical institutions, and facing the Vatican Palaces, the State commits itself to transfer to the Holy See or other bodies indicated by it, all real estate belonging to the State or to third parties existing in said area. The properties belonging to said Congregation and other institutions and those to be transferred are marked on the attached map (Attachment II, 12).

Finally, Italy transfers to the Holy See, in full and free ownership, the former conventual buildings in Rome attached to the Basilica of the Twelve Holy Apostles and to the churches of San Andrea della Valle and San Carlo ai Catinari, with all annexes and dependencies thereof (Attachment III, 3, 4 and 5), and will hand them over, free of all occupants, within one year after the entry into force of the present Treaty.

#### **Art. 15**

The properties indicated in Article 13 hereof and the first and second paragraphs of Article 14, as well as the Palaces of the Dataria, of the Cancellaria, and of Propaganda Fide in Piazza di Spagna, the Palace of the Holy Office with its annexes, that of the Convertendi (now the Congregation for the Eastern Church) in Piazza Scossacavalli, the Palace of the Vicariate, and the other edifices in which the Holy See will in the future desire to locate others of its Dicasteries, even if such edifices form part of the territory of the Italian State, will enjoy the immunities granted by International Law to the headquarters of the diplomatic agents of foreign States.

The same immunities apply also with regard to other churches (even if situated outside Rome) during such time in which, without such churches being open to the public, religious ceremonies are celebrated in them with the participation of the Supreme Pontiff.

#### **Art. 16**

The buildings mentioned in the three preceding Articles, as well as those used as headquarters of the following Pontifical institutions: the Gregorian University, the Biblical, Oriental, and Archaeological Institutes, the Russian Seminary, the Lombard College, the two Palaces of St. Apollinaris, and the Clergy Retreat House of Sts. John and Paul (Attachment III, 1, 1bis, 2, 6, 7, 8), will never be subject to liens or to expropriation for reasons of public utility, save by previous agreement with the Holy See, and will be exempt from taxes, whether ordinary or extraordinary, whether payable to the State or to any other body whatsoever.

It is possible for the Holy See to give all the buildings above mentioned or referred to in the three preceding Articles the arrangement it deems fit, without need of the authorization or consent of the Italian governmental, provincial, or communal authorities, which authorities can in this regard rely safely on the noble artistic traditions which the Catholic Church possesses.

#### **Art. 17**

As from 1 January 1929, compensation of whatsoever nature payable by the Holy See, by other central bodies of the Catholic Church and by bodies administered directly by the Holy See even outside of Rome, to dignitaries, employees and paid workers, even temporary ones, will be exempt within Italian territory from any tax whether payable to the State or to any other body.

**Art. 18**

The treasures of art and science existing within Vatican City and the Lateran Palace will remain open to scholars and visitors, reserving to the Holy See full liberty to regulate the access of the public.

**Art. 19**

Diplomats and envoys of the Holy See, diplomats and envoys of foreign Governments accredited to the Holy See, and dignitaries of the Church arriving from abroad and travelling to Vatican City, holding passports of their States of origin, furnished with the visa of the Papal representative abroad, will be able to have access to Vatican City through Italian territory without any other formality. The same applies for the above-mentioned persons who, holding a regular pontifical passport, will travel to Vatican City from abroad.

**Art. 20**

Goods arriving from abroad and destined for Vatican City or destined for institutions or offices of the Holy See outside its boundaries, will always be admitted from any point of the Italian frontier and in any seaport of the Kingdom for transit through Italian territory, with full exemption from customs fees and duty.

**Art. 21**

All Cardinals enjoy in Italy the honours due to Princes of the Blood. Those Cardinals who reside in Rome outside Vatican City are, for all effects, citizens thereof.

During the vacancy of the Holy See, Italy shall make special arrangements to see that nothing impedes the free transit and access of Cardinals through Italian territory to the Vatican, and shall provide that no impediment or limitation is placed on their personal liberty.

Italy shall also see that within its territory surrounding Vatican City no acts are committed which could possibly disturb the meetings of the Conclave.

The same provisions also apply for Conclaves held outside of Vatican City and for Councils presided over by the Supreme Pontiff or his Legates, also with regard to all Bishops summoned to attend them.

**Art. 22**

At the request of the Holy See, or by its delegation which may be given in individual cases or permanently, Italy will provide within its territory for the punishment of crimes committed within Vatican City, except when the author of the crime will have taken refuge in Italian territory, in which event he will be certainly prosecuted according to the provisions of Italian laws.

The Holy See will hand over to the Italian State persons who may have taken refuge within Vatican City and who have been accused of acts, committed within Italian territory, which are considered to be criminal by the laws of both States.

The same provisions will apply in regard to persons accused of crimes who may have taken refuge within the buildings declared to be immune in Article 15 hereof, unless the persons in charge of such buildings prefer to invite the Italian police agents to enter them in order to arrest such persons.

**Art. 23**

The regulations of International Law will apply for the execution, within the Kingdom, of sentences pronounced by the Courts of Vatican City.

On the other hand, all sentences and measures emanating from ecclesiastical authorities and officially communicated to the civil authorities, concerning ecclesiastical or religious persons and concerning spiritual or disciplinary matters, will without exception have full legal force in Italy, also with all civil effects.

**Art. 24**

In regard to the sovereignty appertaining to it also in the international realm, the Holy See declares that it desires to remain and will remain outside of any temporal rivalries between other States and the international congresses called to settle such matters, unless the contending parties make a mutual appeal to its mission of peace; it reserves to itself in any case the right to exercise its moral and spiritual power.

Consequently, Vatican City will always and in every case be considered neutral and inviolable territory.

**Art. 25**

By a special Convention written below and joined to the present Treaty, which constitutes Attachment IV to the same and forms an integral part thereof, provision is made for the liquidation of the credits of the Holy See with respect to Italy.

**Art. 26**

The Holy See holds that with the agreements signed today it is guaranteed sufficiently what it requires in order to provide with due liberty and independence for the pastoral governance of the Diocese of Rome and of the Catholic Church in Italy and in the world; it declares that the “Roman Question” has been definitely and irrevocably settled and therefore eliminated and it recognizes the Kingdom of Italy under the Dynasty of the House of Savoy with Rome as the capital of the Italian State.

Italy, on its part, recognizes Vatican City State under the sovereignty of the Supreme Pontiff.

The law of May 13, 1871, no. 214 is hereby abrogated together with any other disposition contrary to the present Treaty

**Art. 27**

Within four months after the signature thereof, the present Treaty will be submitted to the Supreme Pontiff and the King of Italy for ratification, and will enter into force from the very act of the exchange of ratifications.

Given in Rome this eleventh day of February, One Thousand Nine Hundred and Twenty-Nine.

# European Convention on State Immunity 1972

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Taking into account the fact that there is in international law a tendency to restrict the cases in which a State may claim immunity before foreign courts;

Desiring to establish in their mutual relations common rules relating to the scope of the immunity of one State from the jurisdiction of the courts of another State, and designed to ensure compliance with judgments given against another State;

Considering that the adoption of such rules will tend to advance the work of harmonisation undertaken by the member States of the Council of Europe in the legal field,

Have agreed as follows:

## **Chapter I Immunity from jurisdiction**

### **Article 1**

1. A Contracting State which institutes or intervenes in proceedings before a court of another Contracting State submits, for the purpose of those proceedings, to the jurisdiction of the courts of that State.
2. Such a Contracting State cannot claim immunity from the jurisdiction of the courts of the other Contracting State in respect of any counterclaim:
  - (a) arising out of the legal relationship or the facts on which the principal claim is based;



- (b) if, according to the provisions of this Convention, it would not have been entitled to invoke immunity in respect of that counterclaim had separate proceedings been brought against it in those courts.
3. A Contracting State which makes a counterclaim in proceedings before a court of another Contracting State submits to the jurisdiction of the courts of that State with respect not only to the counterclaim but also to the principal claim.

#### **Article 2**

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it has undertaken to submit to the jurisdiction of that court either:

- (a) by international agreement;
- (b) by an express term contained in a contract in writing; or
- (c) by an express consent given after a dispute between the parties has arisen.

#### **Article 3**

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if, before claiming immunity, it takes any step in the proceedings relating to the merits. However, if the State satisfies the Court that it could not have acquired knowledge of facts on which a claim to immunity can be based until after it has taken such a step, it can claim immunity based on these facts if it does so at the earliest possible moment.
2. A Contracting State is not deemed to have waived immunity if it appears before a court of another Contracting State in order to assert immunity.

#### **Article 4**

1. Subject to the provisions of Article 5, a Contracting State cannot claim immunity from the jurisdiction of the courts of another Contracting State if the proceedings relate to an obligation of the State, which, by virtue of a contract, falls to be discharged in the territory of the State of the forum.
2. Paragraph 1 shall not apply:
- (a) in the case of a contract concluded between States;
  - (b) if the parties to the contract have otherwise agreed in writing;
  - (c) if the State is party to a contract concluded on its territory and the obligation of the State is governed by its administrative law.

**Article 5**

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to a contract of employment between the State and an individual where the work has to be performed on the territory of the State of the forum.
2. Paragraph 1 shall not apply where:
  - (a) the individual is a national of the employing State at the time when the proceedings are brought;
  - (b) at the time when the contract was entered into the individual was neither a national of the State of the forum nor habitually resident in that State; or
  - (c) the parties to the contract have otherwise agreed in writing, unless, in accordance with the law of the State of the forum, the courts of that State have exclusive jurisdiction by reason of the subject-matter.
3. Where the work is done for an office, agency or other establishment referred to in Article 7, paragraphs 2.a and b of the present article apply only if, at the time the contract was entered into, the individual had his habitual residence in the Contracting State which employs him.

**Article 6**

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it participates with one or more private persons in a company, association or other legal entity having its seat, registered office or principal place of business on the territory of the State of the forum, and the proceedings concern the relationship, in matters arising out of that participation, between the State on the one hand and the entity or any other participant on the other hand.
2. Paragraph 1 shall not apply if it is otherwise agreed in writing.

**Article 7**

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it has on the territory of the State of the forum an office, agency or other establishment through which it engages, in the same manner as a private person, in an industrial, commercial or financial activity, and the proceedings relate to that activity of the office, agency or establishment.
2. Paragraph 1 shall not apply if all the parties to the dispute are States, or if the parties have otherwise agreed in writing.

**Article 8**

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate:

- (a) to a patent, industrial design, trade-mark, service mark or other similar right which, in the State of the forum, has been applied for, registered or deposited or is otherwise protected, and in respect of which the State is the applicant or owner;
- (b) to an alleged infringement by it, in the territory of the State of the forum, of such a right belonging to a third person and protected in that State;
- (c) to an alleged infringement by it, in the territory of the State of the forum, of copy-right belonging to a third person and protected in that State;
- (d) to the right to use a trade name in the State of the forum.

**Article 9**

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to:

- (a) its rights or interests in, or its use or possession of, immovable property; or
- (b) its obligations arising out of its rights or interests in, or use or possession of, immovable property  
and the property is situated in the territory of the State of the forum.

**Article 10**

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to a right in movable or immovable property arising by way of succession, gift or *bona vacantia*.

**Article 11**

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State in proceedings which relate to redress for injury to the person or damage to tangible property, if the facts which occasioned the injury or damage occurred in the territory of the State of the forum, and if the author of the injury or damage was present in that territory at the time when those facts occurred.

**Article 12**

1. Where a Contracting State has agreed in writing to submit to arbitration a dispute which has arisen or may arise out of a civil or commercial matter, that State may not claim immunity from the jurisdiction of a court of another Contracting State

on the territory or according to the law of which the arbitration has taken or will take place in respect of any proceedings relating to:

- (a) the validity or interpretation of the arbitration agreement;
- (b) the arbitration procedure;
- (c) the setting aside of the award,

unless the arbitration agreement otherwise provides.

2. Paragraph 1 shall not apply to an arbitration agreement between States.

### **Article 13**

Paragraph 1 of Article 1 shall not apply where a Contracting State asserts, in proceedings pending before a court of another Contracting State to which it is not a party, that it has a right or interest in property which is the subject-matter of the proceedings, and the circumstances are such that it would have been entitled to immunity if the proceedings had been brought against it.

### **Article 14**

Nothing in this Convention shall be interpreted as preventing a court of a Contracting State from administering or supervising or arranging for the administration of property, such as trust property or the estate of a bankrupt, solely on account of the fact that another Contracting State has a right or interest in the property.

### **Article 15**

A Contracting State shall be entitled to immunity from the jurisdiction of the courts of another Contracting State if the proceedings do not fall within Articles 1 to 14; the court shall decline to entertain such proceedings even if the State does not appear.

## **Chapter II Procedural rules**

### **Article 16**

1. In proceedings against a Contracting State in a court of another Contracting State, the following rules shall apply.
2. The competent authorities of the State of the forum shall transmit
  - the original or a copy of the document by which the proceedings are instituted;
  - a copy of any judgment given by default against a State which was defendant in the proceedings,

through the diplomatic channel to the Ministry of Foreign Affairs of the defendant State, for onward transmission, where appropriate, to the competent authority. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the defendant State.

3. Service of the documents referred to in paragraph 2 is deemed to have been effected by their receipt by the Ministry of Foreign Affairs.
4. The time-limits within which the State must enter an appearance or appeal against any judgment given by default shall begin to run two months after the date on which the document by which the proceedings were instituted or the copy of the judgment is received by the Ministry of Foreign Affairs.
5. If it rests with the court to prescribe the time-limits for entering an appearance or for appealing against a judgment given by default, the court shall allow the State not less than two months after the date on which the document by which the proceedings are instituted or the copy of the judgment is received by the Ministry of Foreign Affairs.
6. A Contracting State which appears in the proceedings is deemed to have waived any objection to the method of service.
7. If the Contracting State has not appeared, judgment by default may be given against it only if it is established that the document by which the proceedings were instituted has been transmitted in conformity with paragraph 2, and that the time-limits for entering an appearance provided for in paragraphs 4 and 5 have been observed.

### **Article 17**

No security, bond or deposit, however described, which could not have been required in the State of the forum of a national of that State or a person domiciled or resident there, shall be required of a Contracting State to guarantee the payment of judicial costs or expenses. A State which is a claimant in the courts of another Contracting State shall pay any judicial costs or expenses for which it may become liable.

### **Article 18**

A Contracting State party to proceedings before a court of another Contracting State may not be subjected to any measure of coercion, or any penalty, by reason of its failure or refusal to disclose any documents or other evidence. However the court may draw any conclusion it thinks fit from such failure or refusal.

### **Article 19**

1. A court before which proceedings to which a Contracting State is a party are instituted shall, at the request of one of the parties or, if its national law so permits,

of its own motion, decline to proceed with the case or shall stay the proceedings if other proceedings between the same parties, based on the same facts and having the same purpose:

- (a) are pending before a court of that Contracting State, and were the first to be instituted; or
  - (b) are pending before a court of any other Contracting State, were the first to be instituted and may result in a judgment to which the State party to the proceedings must give effect by virtue of Article 20 or Article 25.
2. Any Contracting State whose law gives the courts a discretion to decline to proceed with a case or to stay the the proceedings in cases where proceedings between the same parties, based on the same facts and having the same purpose, are pending before a court of another Contracting State, may, by notification addressed to the Secretary General of the Council of Europe, declare that its courts shall not be bound by the provisions of paragraph 1.

## **Chapter III**

### **Effect of Judgment**

#### **Article 20**

1. A Contracting State shall give effect to a judgment given against it by a court of another Contracting State:
  - (a) if, in accordance with the provisions of Articles 1 to 13, the State could not claim immunity from jurisdiction; and
  - (b) if the judgment cannot or can no longer be set aside if obtained by default, or if it is not or is no longer subject to appeal or any other form of ordinary review or to annulment.
2. Nevertheless, a Contracting State is not obliged to give effect to such a judgment in any case:
  - (a) where it would be manifestly contrary to public policy in that State to do so, or where, in the circumstances, either party had no adequate opportunity fairly to present his case;
  - (b) where proceedings between the same parties, based on the same facts and having the same purpose:
    - (i) are pending before a court of that State and were the first to be instituted;
    - (ii) are pending before a court of another Contracting State, were the first to be instituted and may result in a judgment to which the State party to the proceedings must give effect under the terms of this Convention;

- (c) where the result of the judgment is inconsistent with the result of another judgment given between the same parties:
    - (i) by a court of the Contracting State, if the proceedings before that court were the first to be instituted or if the other judgment has been given before the judgment satisfied the conditions specified in paragraph 1.b; or
    - (ii) by a court of another Contracting State where the other judgment is the first to satisfy the requirements laid down in the present Convention;
  - (d) where the provisions of Article 16 have not been observed and the State has not entered an appearance or has not appealed against a judgment by default.
3. In addition, in the cases provided for in Article 10, a Contracting State is not obliged to give effect to the judgment:
- (a) if the courts of the State of the forum would not have been entitled to assume jurisdiction had they applied, *mutatis mutandis*, the rules of jurisdiction (other than those mentioned in the annex to the present Convention) which operate in the State against which judgment is given; or
  - (b) if the court, by applying a law other than that which would have been applied in accordance with the rules of private international law of that State, has reached a result different from that which would have been reached by applying the law determined by those rules.

However, a Contracting State may not rely upon the grounds of refusal specified in sub-paragraphs a and b above if it is bound by an agreement with the State of the forum on the recognition and enforcement of judgments and the judgment fulfils the requirement of that agreement as regards jurisdiction and, where appropriate, the law applied.

### Article 21

1. Where a judgment has been given against a Contracting State and that State does not give effect thereto, the party which seeks to invoke the judgment shall be entitled to have determined by the competent court of that State the question whether effect should be given to the judgment in accordance with Article 20. Proceedings may also be brought before this court by the State against which judgment has been given, if its law so permits.
2. Save in so far as may be necessary for the application of Article 20, the competent court of the State in question may not review the merits of the judgment.
3. Where proceedings are instituted before a court of a State in accordance with paragraph 1:
  - (a) the parties shall be given an opportunity to be heard in the proceedings;

- (b) documents produced by the party seeking to invoke the judgment shall not be subject to legalisation or any other like formality;
  - (c) no security, bond or deposit, however described, shall be required of the party invoking the judgment by reason of his nationality, domicile or residence;
  - (d) the party invoking the judgment shall be entitled to legal aid under conditions no less favourable than those applicable to nationals of the State who are domiciled and resident therein.
4. Each Contracting State shall, when depositing its instrument of ratification, acceptance or accession, designate the court or courts referred to in paragraph 1, and inform the Secretary General of the Council of Europe thereof.

#### **Article 22**

1. A Contracting State shall give effect to a settlement to which it is a party and which has been made before a court of another Contracting State in the course of the proceedings; the provisions of Article 20 do not apply to such a settlement.
2. If the State does not give effect to the settlement, the procedure provided for in Article 21 may be used.

#### **Article 23**

No measures of execution or preventive measures against the property of a Contracting State may be taken in the territory of another Contracting State except where and to the extent that the State has expressly consented thereto in writing in any particular case.

## **Chapter IV Optional provisions**

#### **Article 24**

1. Notwithstanding the provisions of Article 15, any State may, when signing this Convention or depositing its instrument of ratification, acceptance or accession, or at any later date, by notification addressed to the Secretary General of the Council of Europe, declare that, in cases not falling within Articles 1 to 13, its courts shall be entitled to entertain proceedings against another Contracting State to the extent that its courts are entitled to entertain proceedings against States not party to the present Convention. Such a declaration shall be without prejudice to the immunity from jurisdiction which foreign States enjoy in respect of acts performed in the exercise of sovereign authority (*acta jure imperii*).
2. The courts of a State which has made the declaration provided for in paragraph 1 shall not however be entitled to entertain such proceedings against another Con-



tracting State if their jurisdiction could have been based solely on one or more of the grounds mentioned in the annex to the present Convention, unless that other Contracting State has taken a step in the proceedings relating to the merits without first challenging the jurisdiction of the court.

3. The provisions of Chapter II apply to proceedings instituted against a Contracting State in accordance with the present article.
4. The declaration made under paragraph 1 may be withdrawn by notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect three months after the date of its receipt, but this shall not affect proceedings instituted before the date on which the withdrawal becomes effective.

### Article 25

1. Any Contracting State which has made a declaration under Article 24 shall, in cases not falling within Articles 1 to 13, give effect to a judgment given by a court of another Contracting State which has made a like declaration:
  - (a) if the conditions prescribed in paragraph 1.b of Article 20 have been fulfilled; and
  - (b) if the court is considered to have jurisdiction in accordance with the following paragraphs.
2. However, the Contracting State is not obliged to give effect to such a judgment:
  - (a) if there is a ground for refusal as provided for in paragraph 2 of Article 20; or
  - (b) if the provisions of paragraph 2 of Article 24 have not been observed.
3. Subject to the provisions of paragraph 4, a court of a Contracting State shall be considered to have jurisdiction for the purpose of paragraph 1.b:
  - (a) if its jurisdiction is recognised in accordance with the provisions of an agreement to which the State of the forum and the other Contracting State are Parties;
  - (b) where there is no agreement between the two States concerning the recognition and enforcement of judgments in civil matters, if the courts of the State of the forum would have been entitled to assume jurisdiction had they applied, *mutatis mutandis*, the rules of jurisdiction (other than those mentioned in the annex to the present Convention) which operate in the State against which the judgment was given. This provision does not apply to questions arising out of contracts.

4. The Contracting States having made the declaration provided for in Article 24 may, by means of a supplementary agreement to this Convention, determine the circumstances in which their courts shall be considered to have jurisdiction for the purposes of paragraph 1.b of this article.
5. If the Contracting State does not give effect to the judgment, the procedure provided for in Article 21 may be used.

### **Article 26**

Notwithstanding the provisions of Article 23, a judgment rendered against a Contracting State in proceedings relating to an industrial or commercial activity, in which the State is engaged in the same manner as a private person, may be enforced in the State of the forum against property of the State against which judgment has been given, used exclusively in connection with such an activity, if:

- (a) both the State of the forum and the State against which the judgment has been given have made declarations under Article 24;
- (b) the proceedings which resulted in the judgment fell within Articles 1 to 13 or were instituted in accordance with paragraphs 1 and 2 of Article 24; and
- (c) the judgment satisfies the requirements laid down in paragraph 1.b of Article 20.

## **Chapter V General provisions**

### **Article 27**

1. For the purposes of the present Convention, the expression “Contracting State” shall not include any legal entity of a Contracting State which is distinct therefrom and is capable of suing or being sued, even if that entity has been entrusted with public functions.
2. Proceedings may be instituted against any entity referred to in paragraph 1 before the courts of another Contracting State in the same manner as against a private person; however, the courts may not entertain proceedings in respect of acts performed by the entity in the exercise of sovereign authority (*acta jure imperii*).
3. Proceedings may in any event be instituted against any such entity before those courts if, in corresponding circumstances, the courts would have had jurisdiction if the proceedings had been instituted against a Contracting State.

**Article 28**

1. Without prejudice to the provisions of Article 27, the constituent States of a Federal State do not enjoy immunity.
2. However, a Federal State Party to the present Convention, may, by notification addressed to the Secretary General of the Council of Europe, declare that its constituent States may invoke the provisions of the Convention applicable to Contracting States, and have the same obligations.
3. Where a Federal State has made a declaration in accordance with paragraph 2, service of documents on a constituent State of a Federation shall be made on the Ministry of Foreign Affairs of the Federal State, in conformity with Article 16.
4. The Federal State alone is competent to make the declarations, notifications and communications provided for in the present Convention, and the Federal State alone may be party to proceedings pursuant to Article 34.

**Article 29**

The present Convention shall not apply to proceedings concerning:

- (a) social security;
- (b) damage or injury in nuclear matters;
- (c) customs duties, taxes or penalties.

**Article 30**

The present Convention shall not apply to proceedings in respect of claims relating to the operation of seagoing vessels owned or operated by a Contracting State or to the carriage of cargoes and of passengers by such vessels or to the carriage of cargoes owned by a Contracting State and carried on board merchant vessels.

**Article 31**

Nothing in this Convention shall affect any immunities or privileges enjoyed by a Contracting State in respect of anything done or omitted to be done by, or in relation to, its armed forces when on the territory of another Contracting State.

**Article 32**

Nothing in the present Convention shall affect privileges and immunities relating to the exercise of the functions of diplomatic missions and consular posts and of persons connected with them.

**Article 33**

Nothing in the present Convention shall affect existing or future international agreements in special fields which relate to matters dealt with in the present Convention.

**Article 34**

1. Any dispute which might arise between two or more Contracting States concerning the interpretation or application of the present Convention shall be submitted to the International Court of Justice on the application of one of the parties to the dispute or by special agreement unless the parties agree on a different method of peaceful settlement of the dispute.
2. However, proceedings may not be instituted before the International Court of Justice which relate to:
  - (a) a dispute concerning a question arising in proceedings instituted against a Contracting State before a court of another Contracting State, before the court has given a judgment which fulfils the condition provided for in paragraph 1.b of Article 20;
  - (b) a dispute concerning a question arising in proceedings instituted before a court of a Contracting State in accordance with paragraph 1 of Article 21, before the court has rendered a final decision in such proceedings.

**Article 35**

1. The present Convention shall apply only to proceedings introduced after its entry into force.
2. When a State has become Party to this Convention after it has entered into force, the Convention shall apply only to proceedings introduced after it has entered into force with respect to that State.
3. Nothing in this Convention shall apply to proceedings arising out of, or judgments based on, acts, omissions or facts prior to the date on which the present Convention is opened for signature.

## **Chapter VI Final provisions**

**Article 36**

1. The present Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.

2. The Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall enter into force three months after the date of the deposit of its instrument of ratification or acceptance.

#### **Article 37**

1. After the entry into force of the present Convention, the Committee of Ministers of the Council of Europe may, by a decision taken by a unanimous vote of the members casting a vote, invite any non-member State to accede thereto.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.
3. However, if a State having already acceded to the Convention notifies the Secretary General of the Council of Europe of its objection to the accession of another non-member State, before the entry into force of this accession, the Convention shall not apply to the relations between these two States.

#### **Article 38**

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which the present Convention shall apply.
2. Any State may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 40 of this Convention.

#### **Article 39**

No reservation is permitted to the present Convention.

#### **Article 40**

1. Any Contracting State may, in so far as it is concerned, denounce this Convention by means of notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification. This Convention shall, however, continue to apply to proceedings introduced before the date on which the denunciation takes effect, and to judgments given in such proceedings.

#### **Article 41**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Convention of:

- (a) any signature;
- (b) any deposit of an instrument of ratification, acceptance or accession;
- (c) any date of entry into force of this Convention in accordance with Articles 36 and 37 thereof;
- (d) any notification received in pursuance of the provisions of paragraph 2 of Article 19;
- (e) any communication received in pursuance of the provisions of paragraph 4 of Article 21;
- (f) any notification received in pursuance of the provisions of paragraph 1 of Article 24;
- (g) the withdrawal of any notification made in pursuance of the provisions of paragraph 4 of Article 24;
- (h) any notification received in pursuance of the provisions of paragraph 2 of Article 28;
- (i) any notification received in pursuance of the provisions of paragraph 3 or Article 37;
- (j) any declaration received in pursuance of the provisions of Article 38;
- (k) any notification received in pursuance of the provisions of Article 40 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Basle, this 16<sup>th</sup> day of May 1972, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

## **Annex**

The grounds of jurisdiction referred to in paragraph 3, sub-paragraph a, of Article 20, paragraph 2 of Article 24 and paragraph 3, sub-paragraph b, of Article 25 are the following:

- (a) the presence in the territory of the State of the forum of property belonging to the defendant, or the seizure by the plaintiff of property situated there, unless:
  - the action is brought to assert proprietary or possessory rights in that property, or arises from another issue relating to such property; or
  - the property constitutes the security for a debt which is the subject-matter of the action;
- (b) the nationality of the plaintiff;
- (c) the domicile, habitual residence or ordinary residence of the plaintiff within the territory of the State of the forum unless the assumption of jurisdiction on such a ground is permitted by way of an exception made on account of the particular subject-matter of a class of contracts;
- (d) the fact that the defendant carried on business within the territory of the State of the forum, unless the action arises from that business;
- (e) a unilateral specification of the forum by the plaintiff, particularly in an invoice.  
A legal person shall be considered to have its domicile or habitual residence where it has its seat, registered office or principal place of business.

## **ADDITIONAL PROTOCOL**

The member States of the Council of Europe, signatory to the present Protocol,

- Having taken note of the European Convention on State Immunity – hereinafter referred to as “the Convention” – and in particular Articles 21 and 34 thereof;
- Desiring to develop the work of harmonisation in the field covered by the Convention by the addition of provisions concerning a European procedure for the settlement of disputes,

Have agreed as follows:

### **Part I**

#### **Article 1**

1. Where a judgment has been given against a State Party to the Convention and that State does not give effect thereto, the party which seeks to invoke the judgment

shall be entitled to have determined the question whether effect should be given to the judgment in conformity with Article 20 or Article 25 of the Convention, by instituting proceedings before either:

- (a) the competent court of that State in application of Article 21 of the Convention;  
or
- (b) the European Tribunal constituted in conformity with the provisions of Part III of the present Protocol, provided that that State is a Party to the present Protocol and has not made the declaration referred to in Part IV thereof.

The choice between these two possibilities shall be final.

2. If the State intends to institute proceedings before its court in accordance with the provisions of paragraph 1 or Article 21 of the Convention, it must give notice of its intention to do so to the party in whose favour the judgment has been given; the State may thereafter institute such proceedings only if the party has not, within three months of receiving notice, instituted proceedings before the European Tribunal. Once this period has elapsed, the party in whose favour the judgment has been given may no longer institute proceedings before the European Tribunal.
3. Save in so far as may be necessary for the application of Articles 20 and 25 of the Convention, the European Tribunal may not review the merits of the judgment.

## Part II

### Article 2

1. Any dispute which might arise between two or more States parties to the present Protocol concerning the interpretation or application of the Convention shall be submitted, on the application of one of the parties to the dispute or by special agreement, to the European Tribunal constituted in conformity with the provisions of Part III of the present Protocol. The States parties to the present Protocol undertake not to submit such a dispute to a different mode of settlement.
2. If the dispute concerns a question arising in proceedings instituted before a court of one State Party to the Convention against another State Party to the Convention, or a question arising in proceedings instituted before a court of a State Party to the Convention in accordance with Article 21 of the Convention, it may not be referred to the European Tribunal until the court has given a final decision in such proceedings.
3. Proceedings may not be instituted before the European Tribunal which relate to a dispute concerning a judgment which it has already determined or is required to determine by virtue of Part I of this Protocol.



**Article 3**

Nothing in the present Protocol shall be interpreted as preventing the European Tribunal from determining any dispute which might arise between two or more States parties to the Convention concerning the interpretation or application thereof and which might be submitted to it by special agreement, even if these States, or any of them, are not parties to the present Protocol.

**Part III****Article 4**

1. There shall be established a European Tribunal in matters of State Immunity to determine cases brought before it in conformity with the provisions of Parts I and II of the present Protocol.
2. The European Tribunal shall consist of the members of the European Court of Human Rights and, in respect of each non-member State of the Council of Europe which has acceded to the present Protocol, a person possessing the qualifications required of members of that Court designated, with the agreement of the Committee of Ministers of the Council of Europe, by the government of that State for a period of nine years.
3. The President of the European Tribunal shall be the President of the European Court of Human Rights.

**Article 5**

1. Where proceedings are instituted before the European Tribunal in accordance with the provisions of Part I of the present Protocol, the European Tribunal shall consist of a Chamber composed of seven members. There shall sit as *ex officio* members of the Chamber the member of the European Tribunal who is a national of the State against which the judgment has been given and the member of the European Tribunal who is a national of the State of the forum, or, should there be no such member in one or the other case, a person designated by the government of the State concerned to sit in the capacity of a member of the Chamber. The names of the other five members shall be chosen by lot by the President of the European Tribunal in the presence of the Registrar.
2. Where proceedings are instituted before the European Tribunal in accordance with the provisions of Part II of the present Protocol, the Chamber shall be constituted in the manner provided for in the preceding paragraph. However, there shall sit as *ex officio* members of the Chamber the members of the European Tribunal who are nationals of the States parties to the dispute or, should there be no such member, a person designated by the government of the State concerned to sit in the capacity of a member of the Chamber.

3. Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or of the present Protocol, the Chamber may, at any time, relinquish jurisdiction in favour of the European Tribunal meeting in plenary session. The relinquishment of jurisdiction shall be obligatory where the resolution of such question might have a result inconsistent with a judgment previously delivered by a Chamber or by the European Tribunal meeting in plenary session. The relinquishment of jurisdiction shall be final. Reasons need not be given for the decision to relinquish jurisdiction.

#### **Article 6**

1. The European Tribunal shall decide any disputes as to whether the Tribunal has jurisdiction.
2. The hearings of the European Tribunal shall be public unless the Tribunal in exceptional circumstances decides otherwise.
3. The judgments of the European Tribunal, taken by a majority of the members present, are to be delivered in public session. Reasons shall be given for the judgment of the European Tribunal. If the judgment does not represent in whole or in part the unanimous opinion of the European Tribunal, any member shall be entitled to deliver a separate opinion.
4. The judgments of the European Tribunal shall be final and binding upon the parties.

#### **Article 7**

1. The European Tribunal shall draw up its own rules and fix its own procedure.
2. The Registry of the European Tribunal shall be provided by the Registrar of the European Court of Human Rights.

#### **Article 8**

1. The operating costs of the European Tribunal shall be borne by the Council of Europe. States non-members of the Council of Europe having acceded to the present Protocol shall contribute thereto in a manner to be decided by the Committee of Ministers after agreement with these States.
2. The members of the European Tribunal shall receive for each day of duty a compensation to be determined by the Committee of Ministers.

## Part IV

### Article 9

1. Any State may, by notification addressed to the Secretary General of the Council of Europe at the moment of its signature of the present Protocol, or of the deposit of its instrument of ratification, acceptance or accession thereto, declare that it will only be bound by Parts II to V of the present Protocol.
2. Such a notification may be withdrawn at any time.

## Part V

### Article 10

1. The present Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
2. The present Protocol shall enter into force three months after the date of the deposit of the fifth instrument of ratification or acceptance.
3. In respect of a signatory State ratifying or accepting subsequently, the Protocol shall enter into force three months after the date of the deposit of its instrument of ratification or acceptance.
4. A member State of the Council of Europe may not ratify or accept the present Protocol without having ratified or accepted the Convention.

### Article 11

1. A State which has acceded to the Convention may accede to the present Protocol after the Protocol has entered into force.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

### Article 12

No reservation is permitted to the present Protocol.

### Article 13

1. Any Contracting State may, in so far as it is concerned, denounce the present Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification. The Protocol shall, however, continue to apply to proceedings introduced in conformity with the provisions of the protocol before the date on which such denunciation takes effect.
3. Denunciation of the Convention shall automatically entail denunciation of the present Protocol.

#### **Article 14**

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

- (a) any signature of the present Protocol;
- (b) any deposit of an instrument of ratification, acceptance or accession;
- (c) any date of entry into force of the present Protocol in accordance with Articles 10 and 11 thereof;
- (d) any notification received in pursuance of the provisions of Part IV and any withdrawal of any such notification;
- (e) any notification received in pursuance of the provisions of Article 13 and the date on which such denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Protocol.

Done at Basle, this 16<sup>th</sup> day of May 1972, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

# The North Atlantic Treaty 1949<sup>1</sup>

The Parties to this Treaty reaffirm their faith in the purposes and principles of the Charter of the United Nations and their desire to live in peace with all peoples and all governments.

They are determined to safeguard the freedom, common heritage and civilisation of their peoples, founded on the principles of democracy, individual liberty and the rule of law. They seek to promote stability and well-being in the North Atlantic area

They are resolved to unite their efforts for collective defence and for the preservation of peace and security.

They therefore agree to this North Atlantic Treaty:

## **Article 1**

The Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

## **Article 2**

The Parties will contribute toward the further development of peaceful and friendly international relations by strengthening their free institutions, by bringing about a better understanding of the principles upon which these institutions are founded, and by promoting conditions of stability and well-being. They will seek to eliminate conflict in their international economic policies and will encourage economic collaboration between any or all of them.

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<sup>1</sup>See: [http://www.nato.int/cps/en/natolive/official\\_texts\\_17120.htm](http://www.nato.int/cps/en/natolive/official_texts_17120.htm).

**Article 3**

In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.

**Article 4**

The Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened.

**Article 5**

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

**Article 6<sup>1</sup>**

For the purpose of Article 5, an armed attack on one or more of the Parties is deemed to include an armed attack:

- on the territory of any of the Parties in Europe or North America, on the Algerian Departments of France<sup>2</sup>, on the territory of or on the Islands under the jurisdiction of any of the Parties in the North Atlantic area north of the Tropic of Cancer;
- on the forces, vessels, or aircraft of any of the Parties, when in or over these territories or any other area in Europe in which occupation forces of any of the Parties were stationed on the date when the Treaty entered into force or the Mediterranean Sea or the North Atlantic area north of the Tropic of Cancer.

<sup>1</sup>The definition of the territories to which Article 5 applies was revised by Article 2 of the Protocol to the North Atlantic Treaty on the accession of Greece and Turkey signed on 22 October 1951.

<sup>2</sup>On January 16, 1963, the North Atlantic Council noted that insofar as the former Algerian Departments of France were concerned, the relevant clauses of this Treaty had become inapplicable as from July 3, 1962.

**Article 7**

This Treaty does not affect, and shall not be interpreted as affecting in any way the rights and obligations under the Charter of the Parties which are members of the United Nations, or the primary responsibility of the Security Council for the maintenance of international peace and security.

**Article 8**

Each Party declares that none of the international engagements now in force between it and any other of the Parties or any third State is in conflict with the provisions of this Treaty, and undertakes not to enter into any international engagement in conflict with this Treaty.

**Article 9**

The Parties hereby establish a Council, on which each of them shall be represented, to consider matters concerning the implementation of this Treaty. The Council shall be so organised as to be able to meet promptly at any time. The Council shall set up such subsidiary bodies as may be necessary; in particular it shall establish immediately a defence committee which shall recommend measures for the implementation of Articles 3 and 5.

**Article 10**

The Parties may, by unanimous agreement, invite any other European State in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area to accede to this Treaty. Any State so invited may become a Party to the Treaty by depositing its instrument of accession with the Government of the United States of America. The Government of the United States of America will inform each of the Parties of the deposit of each such instrument of accession.

**Article 11**

This Treaty shall be ratified and its provisions carried out by the Parties in accordance with their respective constitutional processes. The instruments of ratification shall be deposited as soon as possible with the Government of the United States of America, which will notify all the other signatories of each deposit. The Treaty shall enter into force between the States which have ratified it as soon as the ratifications of the majority of the signatories, including the ratifications of Belgium, Canada, France, Luxembourg, the Netherlands, the United Kingdom and the United States, have been deposited and shall come into effect with respect to other States on the date of the deposit of their ratifications.<sup>1</sup>

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<sup>1</sup>The Treaty came into force on 24 August 1949, after the deposition of the ratifications of all signatory states.

**Article 12**

After the Treaty has been in force for ten years, or at any time thereafter, the Parties shall, if any of them so requests, consult together for the purpose of reviewing the Treaty, having regard for the factors then affecting peace and security in the North Atlantic area, including the development of universal as well as regional arrangements under the Charter of the United Nations for the maintenance of international peace and security.

**Article 13**

After the Treaty has been in force for twenty years, any Party may cease to be a Party one year after its notice of denunciation has been given to the Government of the United States of America, which will inform the Governments of the other Parties of the deposit of each notice of denunciation.

**Article 14**

This Treaty, of which the English and French texts are equally authentic, shall be deposited in the archives of the Government of the United States of America. Duly certified copies will be transmitted by that Government to the Governments of other signatories.



# Peace Treaty between the Holy Roman Emperor and the King of France and their respective Allies, Münster 1648<sup>1</sup>

In the name of the most holy and individual Trinity: Be it known to all, and every one whom it may concern, or to whom in any manner it may belong, That for many Years past, Discords and Civil Divisions being stir'd up in the Roman Empire, which increas'd to such a degree, that not only all Germany, but also the neighbouring Kingdoms, and France particularly, have been involv'd in the Disorders of a long and cruel War: And in the first place, between the most Serene and most Puissant Prince and Lord, Ferdinand the Second, of famous Memory, elected Roman Emperor, always August, King of Germany, Hungary, Bohemia, Dalmatia, Croatia, Slavonia, Arch-Duke of Austria, Duke of Burgundy, Brabant, Styria, Carinthia, Carniola, Marquiss of Moravia, Duke of Luxemburgh, the Higher and Lower Silesia, of Wirtemberg and Teck, Prince of Suabia, Count of Hapsburg, Tirol, Kyburg and Goritia, Marquiss of the Sacred Roman Empire, Lord of Burgovia, of the Higher and Lower Lusace, of the Marquisate of Slavonia, of Port Naon and Salines, with his Allies and Adherents on one side; and the most Serene, and the most Puissant Prince, Lewis the Thirteenth, most Christian King of France and Navarre, with his Allies and Adherents on the other side. And after their Decease, between the most Serene and Puissant Prince and Lord, Ferdinand the Third, elected Roman Emperor, always August, King of Germany, Hungary, Bohemia, Dalmatia, Croatia, Slavonia, Arch-Duke of Austria, Duke of Burgundy, Brabant, Styria, Carinthia, Carniola, Marquiss of Moravia, Duke of Luxemburg, of the Higher and Lower Silesia, of Wirtemberg and Teck, Prince of Suabia, Count of Hapsburg, Tirol, Kyburg and Goritia, Marquiss of the Sacred Roman Empire, Burgovia, the Higher and Lower Lusace, Lord of the Marquisate of Slavonia, of Port Naon and Salines, with his Allies and Adherents on the one side; and the most Serene and most Puissant Prince and Lord, Lewis the Fourteenth, most Christian King of France and Navarre, with his

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<sup>1</sup>See: <http://www.tfo.upm.es/ImperialismoWeb/TratadoWestfalia.htm>.

Allies and Adherents on the other side: from whence ensu'd great Effusion of Christian Blood, and the Desolation of several Provinces. It has at last happen'd, by the effect of Divine Goodness, seconded by the Endeavours of the most Serene Republick of Venice, who in this sad time, when all Christendom is imbroil'd, has not ceas'd to contribute its Counsels for the publick Welfare and Tranquillity; so that on the side, and the other, they have form'd Thoughts of an universal Peace. And for this purpose, by a mutual Agreement and Covenant of both Partys, in the year of our Lord 1641. the 25<sup>th</sup> of December, N.S. or the 15<sup>th</sup> O.S. it was resolv'd at Hamburgh, to hold an Assembly of Plenipotentiary Ambassadors, who should render themselves at Munster and Osnabrug in Westphalia the 11<sup>th</sup> of July, N.S. or the 1<sup>st</sup> of the said month O.S. in the year 1643. The Plenipotentiary Ambassadors on the one side, and the other, duly establish'd, appearing at the prefixt time, and on the behalf of his Imperial Majesty, the most illustrious and most excellent Lord, Maximilian Count of Trautmansdorf and Weinsberg, Baron of Gleichenberg, Neustadt, Negan, Burgau, and Torzenbach, Lord of Teinitz, Knight of the Golden Fleece, Privy Counsellor and Chamberlain to his Imperial Sacred Majesty, and Steward of his Houshold; the Lord John Lewis, Count of Nassau, Catzenellebogen, Vianden, and Dietz, Lord of Bilstein, Privy Counsellor to the Emperor, and Knight of the Golden Fleece; Monsieur Isaac Volmamarus, Doctor of Law, Counsellor, and President in the Chamber of the most Serene Lord Arch-Duke Ferdinand Charles. And on the behalf of the most Christian King, the most eminent Prince and Lord, Henry of Orleans, Duke of Longueville, and Estouteville, Prince and Sovereign Count of Neuschaftel, Count of Dunois and Tancerville, Hereditary Constable of Normandy, Governor and Lieutenant-General of the same Province, Captain of the Cent Hommes d'Arms, and Knight of the King's Orders, &c. as also the most illustrious and most excellent Lords, Claude de Mesmes, Count d'Avaux, Commander of the said King's Orders, one of the Superintendents of the Finances, and Minister of the Kingdom of France &c. and Abel Servien, Count la Roche of Aubiers, also one of the Ministers of the Kingdom of France. And by the Mediation and Interposition of the most illustrious and most excellent Ambassador and Senator of Venice, Aloysius Contarini Knight, who for the space of five Years, or thereabouts, with great Diligence, and a Spirit intirely impartial, has been inclin'd to be a Mediator in these Affairs. After having implor'd the Divine Assistance, and receiv'd a reciprocal Communication of Letters, Commissions, and full Powers, the Copys of which are inserted at the end of this Treaty, in the presence and with the consent of the Electors of the Sacred Roman Empire, the other Princes and States, to the Glory of God, and the Benefit of the Christian World, the following Articles have been agreed on and consented to, and the same run thus.

## I.

That there shall be a Christian and Universal Peace, and a perpetual, true, and sincere Amity, between his Sacred Imperial Majesty, and his most Christian Majesty; as also, between all and each of the Allies, and Adherents of his said Imperial Majesty,

the House of Austria, and its Heirs, and Successors; but chiefly between the Electors, Princes, and States of the Empire on the one side; and all and each of the Allies of his said Christian Majesty, and all their Heirs and Successors, chiefly between the most Serene Queen and Kingdom of Swedeland, the Electors respectively, the Princes and States of the Empire, on the other part. That this Peace and Amity be observ'd and cultivated with such a Sincerity and Zeal, that each Party shall endeavour to procure the Benefit, Honour and Advantage of the other; that thus on all sides they may see this Peace and Friendship in the Roman Empire, and the Kingdom of France flourish, by entertaining a good and faithful Neighbourhood.

## II.

That there shall be on the one side and the other a perpetual Oblivion, Amnesty, or Pardon of all that has been committed since the beginning of these Troubles, in what place, or what manner soever the Hostilitys have been practis'd, in such a manner, that no body, under any pretext whatsoever, shall practice any Acts of Hostility, entertain any Enmity, or cause any Trouble to each other; neither as to Persons, Effects and Securitys, neither of themselves or by others, neither privately nor openly, neither directly nor indirectly, neither under the colour of Right, nor by the way of Deed, either within or without the extent of the Empire, notwithstanding all Covenants made before to the contrary: That they shall not act, or permit to be acted, any wrong or injury to any whatsoever; but that all that has pass'd on the one side, and the other, as well before as during the War, in Words, Writings, and Outrageous Actions, in Violences, Hostilitys, Damages and Expences, without any respect to Persons or Things, shall be entirely abolish'd in such a manner that all that might be demanded of, or pretended to, by each other on that behalf, shall be bury'd in eternal Oblivion.

## III.

And that a reciprocal Amity between the Emperor, and the Most Christian King, the Electors, Princes and States of the Empire, may be maintain'd so much the more firm and sincere (to say nothing at present of the Article of Security, which will be mention'd hereafter) the one shall never assist the present or future Enemys of the other under any Title or Pretence whatsoever, either with Arms, Money, Soldiers, or any sort of Ammunition; nor no one, who is a Member of this Pacification, shall suffer any Enemys Troops to retire thro' or sojourn in his Country.

## IV.

That the Circle of Burgundy shall be and continue a Member of the Empire, after the Disputes between France and Spain (comprehended in this Treaty) shall be terminated. That nevertheless, neither the Emperor, nor any of the States of the Empire, shall meddle with the Wars which are now on foot between them. That if for the future any Dispute arises between these two Kingdoms, the abovesaid reciprocal Obligation of

not aiding each others Enemys, shall always continue firm between the Empire and the Kingdom of France, but yet so as that it shall be free for the States to succour; without the bounds of the Empire, such or such Kingdoms, but still according to the Constitutions of the Empire.

**V.**

That the Controversy touching Lorain shall be refer'd to Arbitrators nominated by both sides, or it shall be terminated by a Treaty between France and Spain, or by some other friendly means; and it shall be free as well for the Emperor, as Electors, Princes and States of the Empire, to aid and advance this Agreement by an amicable Interposition, and other Offices of Pacification, without using the force of Arms.

**VI.**

According to this foundation of reciprocal Amity, and a general Amnesty, all and every one of the Electors of the sacred Roman Empire, the Princes and States (therein comprehending the Nobility, which depend immediately on the Empire) their Vassals, Subjects, Citizens, Inhabitants (to whom on the account of the Bohemian or German Troubles or Alliances, contracted here and there, might have been done by the one Party or the other, any Prejudice or Damage in any manner, or under what pretence soever, as well in their Lordships, their fiefs, Underfiefs, Allodations, as in their Dignitys, Immunitys, Rights and Privileges) shall be fully re-establish'd on the one side and the other, in the Ecclesiastick or Laick State, which they enjoy'd, or could lawfully enjoy, notwithstanding any Alterations, which have been made in the mean time to the contrary.

**VII.**

If the Possessors of Estates, which are to be restor'd, think they have lawful Exceptions, yet it shall not hinder the Restitution; which done, their Reasons and Exceptions may be examin'd before competent Judges, who are to determine the same.

**VIII.**

And tho by the precedent general Rule it may be easily judg'd who those are, and how far the Restitution extends; nevertheless, it has been thought fit to make a particular mention of the following Cases of Importance, but yet so that those which are not in express Terms nam'd, are not to be taken as if they were excluded or forgot.

**X.**

Since the Arrest the Emperor has formerly caus'd to be made in the Provincial Assembly, against the moveable Effects of the Prince Elector of Treves, which were transported into the Dutchy of Luxemburg, tho releas'd and abolish'd, yet at the

instance of some has been renew'd; to which has been added a Sequestration, which the said Assembly has made of the Jurisdiction of Burch, belonging to the Archbishoprick, and of the Moiety of the Lordship of St. John, belonging to John Reinbard of Soeteren, which is contrary to the Concordat's drawn up at Ausburg in the year 1548 by the publick interposition of the Empire, between the Elector of Treves, and the Dutchy of Burgundy: It has been agreed, that the abovesaid Arrest and Sequestration shall be taken away with all speed from the Assembly of Luxemburg, that the said Jurisdiction, Lordship, and Electoral and Patrimonial Effects, with the sequestred Revenues, shall be releas'd and restor'd to the Elector; and if by accident some things should be Imbezeld, they shall be fully restor'd to him; the Petitioners being refer'd, for the obtaining a determination of their Rights, to the Judge of the Prince Elector, who is competent in the Empire.

#### X.

As for what concerns the Castles of Ehrenbreitstein and Homstein, the Emperor shall withdraw, or cause the Garisons to be withdrawn in the time and manner limited hereafter in the Article of Execution, and shall restore those Castles to the Elector of Treves, and to his Metropolitan Chapter, to be in the Protection of the Empire, and the Electorate; for which end the Captain, and the new Garison which shall be put therein by the Elector, shall also take the Oaths of Fidelity to him and his Chapter.

#### XI.

The Congress of Munster and Osnabrug having brought the Palatinate Cause to that pass, that the Dispute which has lasted for so long time, has been at length terminated; the Terms are these.

#### XII.

In the first place, as to what concerns the House of Bavaria, the Electoral Dignity which the Electors Palatine have hitherto had, with all their Regales, Offices, Precedencys, Arms and Rights, whatever they be, belonging to this Dignity, without excepting any, as also all the Upper Palatinate and the County of Cham, shall remain, as for the time past, so also for the future, with all their Appurtenances, Regales and Rights, in the possession of the Lord Maximilian, Count Palatine of the Rhine, Duke of Bavaria, and of his children, and all the Willielmine Line, whilst there shall be any Male Children in being.

#### XIII.

Reciprocally the Elector of Bavaria renounces entirely for himself and his Heirs and Successors the Debt of Thirteen Millions, as also all his Pretensions in Upper Austria; and shall deliver to his Imperial Majesty immediately after the Publication of the Peace, all Acts and Arrests obtain'd for that end, in order to be made void and null.

**XIV.**

As for what regards the House of Palatine, the Emperor and the Empire, for the benefit of the publick Tranquillity, consent, that by virtue of this present Agreement, there be establish'd an eighth Electorate; which the Lord Charles Lewis, Count Palatine of the Rhine, shall enjoy for the future, and his Heirs, and the Descendants of the Rudolphine Line, pursuant to the Order of Succession, set forth in the Golden Bull; and that by this Investiture, neither the Lord Charles Lewis, nor his Successors shall have any Right to that which has been given with the Electoral Dignity to the Elector of Bavaria, and all the Branch of William.

**XV.**

Secondly, that all the Lower Palatinate, with all and every the Ecclesiastical and Secular Lands, Rights and Appurtenances, which the Electors and Princes Palatine enjoy'd before the Troubles of Bohemia, shall be fully restor'd to him; as also all the Documents, Registers and Papers belonging thereto; annulling all that hath been done to the contrary. And the Emperor engages, that neither the Catholick King, nor any other who possess any thing thereof, shall any ways oppose this Restitution.

**XVI.**

Forasmuch-as that certain Jurisdictions of the Bergstraet, belonging antiently to the Elector of Mayence, were in the year 1463 mortgag'd to the House Palatine for a certain Sum of Money: upon condition of perpetual Redemption, it has been agreed that the same Jurisdictions shall be Restor'd to the present Elector of Mayence, and his Successors in the Archbishoprick of Mayence, provided the Mortgage be paid in ready Mony, within the time limited by the Peace to be concluded; and that he satisfies the other Conditions, which he is bound to by the Tenor of the Mortgage-Deeds.

**XVII.**

It shall also be free for the Elector of Treves, as well in the Quality of Bishop of Spires as Bishop of Worms, to sue before competent Judges for the Rights he pretends to certain Ecclesiastical Lands, situated in the Territorys of the Lower Palatinate, if so be those Princes make not a friendly Agreement among themselves.

**XVIII.**

That if it should happen that the Male Branch of William should be intirely extinct, and the Palatine Branch still subsist, not only the Upper Palatinate, but also the Electoral Dignity of the Dukes of Bavaria, shall revert to the said surviving Palatine, who in the mean time enjoys the Investiture: but then the eighth Electorate shall be intirely suppress'd. Yet in such case, nevertheless, of the return of the Upper Palatinate to the surviving Palatines, the Heirs of any Allodian Lands of the Bavarian Electors shall

remain in Possession of the Rights and Benefices, which may lawfully appertain to them.

**XIX.**

That the Family-Contracts made between the Electoral House of Heidelberg and that of Nieuburg, touching the Succession to the Electorate, confirm'd by former Emperors; as also all the Rights of the Rudolphine Branch, forasmuch as they are not contrary to this Disposition, shall be conserv'd and maintain'd entire.

**XX.**

Moreover, if any Fiefs in Juliers shall be found open by lawful Process, the Question shall be decided in favour of the House Palatine.

**XXI.**

Further, to ease the Lord Charles Lewis, in some measure, of the trouble of providing his Brothers with Appenages, his Imperial Majesty will give order that forty thousand Rixdollars shall be paid to the said Brothers, in the four ensuing Years; the first commencing with the Year 1649. The Payment to be made of ten thousand Rixdollars yearly, with five per Cent Interest.

**XXII.**

Further, that all the Palatinate House, with all and each of them, who are, or have in any manner adher'd to it; and above all, the Ministers who have serv'd in this Assembly, or have formerly serv'd this House; as also all those who are banish'd out of the Palatinate, shall enjoy the general Amnesty here above promis'd, with the same Rights as those who are comprehended therein, or of whom a more particular and ampler mention has been made in the Article of Grievance.

**XXIII.**

Reciprocally the Lord Charles Lewis and his Brothers shall render Obedience, and be faithful to his Imperial Majesty, like the other Electors and Princes of the Empire; and shall renounce their Pretensions to the Upper Palatinate, as well for themselves as their Heirs, whilst any Male, and lawful Heir of the Branch of William shall continue alive.

**XXIV.**

And upon the mention which has been made, to give a Dowry and a Pension to the Mother Dowager of the said Prince, and to his Sisters; his Sacred Imperial Majesty (according to the Affection he has for the Palatinate House) has promis'd to the said Dowager, for her Maintenance and Subsistence, to pay once for all twenty thousand

Rixdollars; and to each of the Sisters of the said Lord Charles Lewis, when they shall marry, ten thousand Rixdollars, the said Prince Charles Lewis being bound to disburse the Overplus.

**XXV.**

That the said Lord Charles Lewis shall give no trouble to the Counts of Leiningen and of Daxburg, nor to their Successors in the Lower Palatinate; but he shall let them peaceably enjoy the Rights obtain'd many Ages ago, and confirm'd by the Emperors.

**XXVI.**

That he shall inviolably leave the Free Nobility of the Empire, which are in Franconia, Swabia, and all along the Rhine, and the Districts thereof, in the state they are at present.

**XXVII.**

That the Fiefs confer'd by the Emperor on the Baron Gerrard of Waldenburg, call'd Schenck-heeren, on Nicholas George Reygersberg, Chancellor of Mayence, and on Henry Brombser, Baron of Rudeheim; Item, on the Elector of Bavaria, on Baron John Adolph Wolff, call'd Meternicht, shall remain firm and stable: That nevertheless these Vassals shall be bound to take an Oath of Fidelity to the Lord Charles Lewis, and to his Successors, as their direct Lords, and to demand of him the renewing of their Fiefs.

**XXVIII.**

That those of the Confession of Augsburg, and particularly the Inhabitants of Oppenheim, shall be put in possession again of their Churches, and Ecclesiastical Estates, as they were in the Year 1624. as also that all others of the said Confession of Augsburg, who shall demand it, shall have the free Exercise of their Religion, as well in publick Churches at the appointed Hours, as in private in their own Houses, or in others chosen for this purpose by their Ministers, or by those of their Neighbours, preaching the Word of God.

**XXIX.**

That the Paragraphs, Prince Lewis Philip, &c. Prince Frederick, &c. and Prince Leopold Lewis, &c. be understood as here inserted, after the same manner they are contain'd in the Instrument, or Treaty of the Empire with Swedeland.

**XXX.**

That the Dispute depending between the Bishops of Bamberg and Wirtzberg on the one, and the Marquiss of Brandenburg, Culmbach, and Onalzbach, on the other side,



touching the Castle, Town, Jurisdiction, and Monastery of Kitzingen in Franconia, on the Main, shall be amicably compos'd; or, in a judicial manner, within two years time, upon pain of the Person's losing his Pretensions, that shall delay it: and that, in the mean time, the Fort of Wirtzberg shall be surrender'd to the said Lords Marquisses, in the same state it was taken, according as it has been agreed and stipulated.

**XXXI.**

That the Agreement made, touching the Entertainment of the Lord Christian William, Marquiss of Brandenburg, shall be kept as if recited in this place, as it is put down in the fourteenth Article of the Treaty between the Empire and Swedeland.

**XXXII.**

The Most Christian King shall restore to the Duke of Wirtemberg, after the manner hereafter related, where we shall mention the withdrawing of Garisons, the Towns and Forts of Hohenwiell, Schorendorff, Turbingen, and all other places, without reserve, where he keeps Garisons in the Dutchy of Wirtemberg. As for the rest, the Paragraph, THE HOUSE OF WIRTEMBERG, &c. shall be understood as inserted in this Place, after the same manner it's contain'd in the Treaty of the Empire, and of Swedeland.

**XXXIII.**

That the Princes of Wirtemberg, of the Branches of Montbeillard, shall be re-establish'd in all their Domains in Alsace, and wheresoever they be situated, but particularly in the three Fiefs of Burgundy, Clerval, and Passavant: and both Partys shall re-establish them in the State, Rights and Prerogatives they enjoy'd before the Beginning of these Wars.

**XXXIV.**

That Frederick, Marquiss of Baden, and of Hachberg, and his Sons and Heirs, with all those who have serv'd them in any manner whatsoever, and who serve them still, of what degree they may be, shall enjoy the Amnesty above-mention'd, in the second and third Article, with all its Clauses and Benefices; and by virtue thereof, they shall be fully re-establish'd in the State Ecclesiastical or Secular, in the same manner as the Lord George Frederick Marquiss of Beden and of Hachberg, possess'd, before the beginning of the Troubles of Bohemia, whatever concern'd the lower Marquisate of Baden, call'd vulgarly Baden Durlach, as also what concern'd the Marquisate of Hachberg, and the Lordships of Rottelen, Badenweiller, and Sausenberg, notwithstanding, and annulling all the Changes made to the contrary. After which shall be restor'd to Marquiss Frederick, the Jurisdictions of Stein and Renchingen, without being charg'd with Debts, which the Marquiss William has contracted during that time, by Reason of the Revenues, Interests and Charges, put down in the Transaction pass'd at Etlingen

in the Year 1629. and transfer'd to the said William Marquiss of Baden, with all the Rights, Documents, Writings, and other things appertaining; so that all the Plea concerning the Charges and Revenues, as well receiv'd as to receive, with their Damages and Interests, to reckon from the time of the first Possession, shall be intirely taken away and abolish'd.

### XXXV.

That the Annual Pension of the Lower Marquisate, payable to the Upper Marquisate, according to former Custom, shall by virtue of the present Treaty be intirely taken away and annihilated; and that for the future nothing shall be pretended or demanded on that account, either for the time past or to come.

### XXXVI.

That for the future, the Precedency and Session, in the States and Circle of Swabia, or other General or Particular Assemblys of the Empire, and any others whatsoever, shall be alternative in the two Branches of Baden; viz. in that of the Upper, and that of the Lower Marquisate of Baden: but nevertheless this Precedency shall remain in the Marquiss Frederick during his Life. It has been agreed, touching the Barony of Hohengerolt Zegk that if Madam, the Princess of Baden, verifies the Rights of her Pretension upon the said Barony by authentick Documents, Restitution shall be made her, according to the Rights and Contents of the said Documents, as soon as Sentence shall be pronounc'd. That the Cognizance of this Cause shall be terminated within two Years after the Publication of the Peace: And lastly, no Actions, Transaction, or Exceptions, either general or particular, nor Clauses comprehended in this Treaty of Peace, and whereby they would derogate from the Vigour of this Article, shall be at any time alledg'd by any of the Partys against this special Agreement. The Paragraphs, the Duke of Croy, &c. As for the Controversy of Naussau-Siegen, &c. To the Counts of Naussau, Sarrepoint, &c. The House of Hanau, &c. John Albert Count of Solms, &c. as also, Shall be re-establish'd the House of Solms, Hohensolms, &c. The Counts of Isemburg, &c. The Rhinegraves, &c. The Widow of Count Ernest of Sainen, &c. The Castle and the County of Flackenstein, &c. Let also the House of Waldeck be re-establish'd, &c. Joachim Ernest Count of Ottingen, &c. Item, The House of Hohenlo, &c. Frederick Lewis, &c. The Widow and Heirs of the Count of Brandenstein, &c. The Baron Paul Kevenhuller, &c. shall be understood to be inserted in this place word by word, as they are put down in the Instruor Treaty between the Empire and Swedeland.

### XXXVII.

That the Contracts, Exchanges, Transactions, Obligations, Treatys, made by Constraint or Threats, and extorted illegally from States or Subjects (as in particular, those of Spiers complain, and those of Weisenburg on the Rhine, those of Landau, Reitlingen,

Hailbron, and others) shall be so annull'd and abolish'd, that no more Enquiry shall be made after them.

### XXXVIII.

That if Debtors have by force got some Bonds from their Creditors, the same shall be restor'd, but not with prejudice to their Rights.

### XXXIX.

That the Debts either by Purchase, Sale, Revenues, or by what other name they may be call'd, if they have been violently extorted by one of the Partys in War, and if the Debtors alledge and offer to prove there has been a real Payment, they shall be no more prosecuted, before these Exceptions be first adjusted. That the Debtors shall be oblig'd to produce their Exceptions within the term of two years after the Publication of the Peace, upon pain of being afterwards condemn'd to perpetual Silence.

### XL.

That Processes which have been hitherto enter'd on this Account, together with the Transactions and Promises made for the Restitution of Debts, shall be look'd upon as void; and yet the Sums of Money, which during the War have been exacted bona fide, and with a good intent, by way of Contributions, to prevent greater Evils by the Contributors, are not comprehended herein.

### XLI.

That Sentences pronounc'd during the War about Matters purely Secular, if the Defect in the Proceedings be not fully manifest, or cannot be immediately demonstrated, shall not be esteem'd wholly void; but that the Effect shall be suspended until the Acts of Justice (if one of the Partys demand the space of six months after the Publication of the Peace, for the reviewing of his Process) be review'd and weigh'd in a proper Court, and according to the ordinary or extraordinary Forms us'd in the Empire: to the end that the former Judgments may be confirm'd, amended, or quite eras'd, in case of Nullity.

### XLII.

In the like manner, if any Royal, or particular Fiefs, have not been renew'd since the Year 1618. nor Homage paid to whom it belongs; the same shall bring no prejudice, and the Investiture shall be renew'd the day the Peace shall be concluded.

### XLIII.

Finally, That all and each of the Officers, as well Military Men as Counsellors and Gownmen, and Ecclesiasticks of what degree they may be, who have serv'd the one or

other Party among the Allies, or among their Adherents, let it be in the Gown, or with the Sword, from the highest to the lowest, without any distinction or exception, with their Wives, Children, Heirs, Successors, Servants, as well concerning their Lives as Estates, shall be restor'd by all Partys in the State of Life, Honour, Renown, Liberty of Conscience, Rights and Privileges, which they enjoy'd before the abovesaid Disorders; that no prejudice shall be done to their Effects and Persons, that no Action or accusation shall be enter'd against them; and that further, no Punishment be inflicted on them, or they to bear any damage under what pretence soever: And all this shall have its full effect in respect to those who are not Subjects or Vassals of his Imperial Majesty, or of the House of Austria.

#### **XLIV.**

But for those who are Subjects and Hereditary Vassals of the Emperor, and of the House of Austria, they shall really have the benefit of the Amnesty, as for their Persons, Life, Reputation, Honours: and they may return with Safety to their former Country; but they shall be oblig'd to conform, and submit themselves to the Laws of the Realms, or particular Provinces they shall belong to.

#### **XLV.**

As to their Estates that have been lost by Confiscation or otherways, before they took the part of the Crown of France, or of Swedeland, notwithstanding the Plenipotentiarys of Swedeland have made long instances, they may be also restor'd. Nevertheless his Imperial Majesty being to receive Law from none, and the Imperialists sticking close thereto, it has not been thought convenient by the States of the Empire, that for such a Subject the War should be continu'd: And that thus those who have lost their Effects as aforesaid, cannot recover them to the prejudice of their last Masters and Possessors. But the Estates, which have been taken away by reason of Arms taken for France or Swedeland, against the Emperor and the House of Austria, they shall be restor'd in the State they are found, and that without any Compensation for Profit or Damage.

#### **XLVI.**

As for the rest, Law and Justice shall be administer'd in Bohemia, and in all the other Hereditary Provinces of the Emperor, without any respect; as to the Catholicks, so also to the Subjects, Creditors, Heirs, or private Persons, who shall be of the Confession of Augsburg, if they have any Pretensions, and enter or prosecute any Actions to obtain Justice.

#### **XLVII.**

But from this general Restitution shall be exempted things which cannot be restor'd, as Things movable and moving, Fruits gather'd, Things alienated by the Authority of

the Chiefs of the Party, Things destroy'd, ruin'd, and converted to other uses for the publick Security, as publick and particular Buildings, whether sacred or profane, publick or private Gages, which have been, by surprize of the Enemys, pillag'd, confiscated, lawfully sold, or voluntarily bestow'd.

#### XLVIII.

And as to the Affair of the Succession of Juliers, those concern'd, if a course be not taken about it, may one day cause great Troubles in the Empire about it; it has been agreed, That the Peace being concluded it shall be terminated without any Delay, either by ordinary means before his Imperial Majesty, or by a friendly Composition, or some other lawful ways.

#### XLIX.

And since for the greater Tranquillity of the Empire, in its general Assemblies of Peace, a certain Agreement has been made between the Emperor, Princes and States of the Empire, which has been inserted in the Instrument and Treaty of Peace, concluded with the Plenipotentiarys of the Queen and Crown of Swedeland, touching the Differences about Ecclesiastical Lands, and the Liberty of the Exercise of Religion; it has been found expedient to confirm, and ratify it by this present Treaty, in the same manner as the abovesaid Agreement has been made with the said Crown of Swedeland; also with those call'd the Reformed, in the same manner, as if the words of the abovesaid Instrument were reported here verbatim.

#### L.

Touching the Affair of Hesse Cassel, it has been agreed as follows: In the first place, The House of Hesse Cassel, and all its Princes, chiefly Madam Emelie Elizabeth Landgravine of Hesse, and her Son Monsieur William and his Heirs, his Ministers, Officers, Vassals, Subjects, Soldiers, and others who follow his Service in any manner soever, without any Exception, notwithstanding Contracts to the contrary, Processes, Proscriptions, Declarations, Sentences, Executions and Transactions; as also notwithstanding any Actions and Pretensions for Damages and Injuries as well from Neutrals, as from those who were in Arms, annull'd by the General Amnesty here before establish'd, and to take place from the beginning of the War in Bohemia, with a full Restitution (except the Vassals, and Hereditary Subjects of his Imperial Majesty, and the House of Austria, as is laid down in the Paragraph, Tandemomnes, &c.) shall partake of all the Advantages redounding from this Peace, with the same Rights other States enjoy, as is set forth in the Article which commences, Unanimi, &c.

#### LI.

In the second place, the House of Hesse Cassel, and its Successors, shall retain, and for this purpose shall demand at any time, and when it shall be expir'd, the Investiture

of his Imperial Majesty, and shall take the Oath of Fidelity for the Abby of Hitsfield, with all its Dependencys, as well Secular as Ecclesiastical, situated within or without his Territorys (as the Deanery of Gellingen) saving nevertheless the Rights possess'd by the House of Saxony, time out of mind.

#### LII.

In the third place, the Right of a direct Signiory over the Jurisdictions and Bayliwick of Schaumburg, Buckenburg, Saxenhagen, and Stattenhagen, given heretofore and adjudged to the Bishoprick of Mindau, shall for the future belong unto Monsieur William, the present Landgrave of Hesse, and his Successors in full Possession, and for ever, so as that the said Bishop, and no other shall be capable of molesting him; saving nevertheless the Agreement made between Christian Lewis, Duke of Brunswick and Lunenburg, and the Landgravine of Hesse, and Philip Count of Lippe, as also the Agreement made between the said Landgravine, and the said Count.

#### LIII.

It has been further agreed, That for the Restitution of Places possess'd during this War, and for the Indemnity of Madam, the Landgravine of Hesse, who is the Guardian, the Sum of Six Hundred Thousand Rixdollars shall be given to her and her Son, or his Successors Princes of Hesse, to be had from the Archbishopricks of Mayence and Cologne, from the Bishopricks of Paderborn and Munster, and the Abby of Fulden; which Sum shall be paid at Cassel in the term of eight Months, to reckon from the Day of the Ratification of the Peace, at the peril and charge of the Solvent: and no Exception shall be used to evade this promis'd Payment, on any Pretence; much less shall any Seizure be made of the Sum agreed on.

#### LIV.

And to the end that Madam, the Landgravine, may be so much the more assur'd of the Payment, she shall retain on the Conditions following, Nuys, Cuesfeldt, and Newhaus, and shall keep Garisons in those Places which shall depend on her alone; but with this Limitation, That besides the Officers and other necessary Persons in the Garisons, those of the three above-nam'd Places shall not exceed the number of Twelve Hundred Foot, and a Hundred Horse; leaving to Madam, the Landgravine, the Disposition of the number of Horse and Foot she shall be pleas'd to put in each of these Places, and whom she will constitute Governor.

#### LV.

The Garisons shall be maintain'd according to the Order, which has been hitherto usually practis'd, for the Maintenance of the Hessian Soldiers and Officers; and the things necessary for the keeping of the Forts shall be furnish'd by the Arch-bishopricks

and Bishopricks, in which the said Fortresses are situated, without any Diminution of the Sum above-mention'd. It shall be allow'd the Garisons, to exact the Money of those who shall retard Payment too long, or who shall be refractory, but not any more than what is due. The Rights of Superiority and Jurisdiction, as well Ecclesiastical as Secular, and the Revenues of the said Castles and Towns, shall remain in the Arch-bishop of Cologne.

#### LVI.

As soon as after the Ratification of Peace, Three Hundred Thousand Rixdollars shall be paid to Madam, the Landgravine, she shall give up Nuys, and shall only retain Cuesfeldt and Newhaus; but yet so as that the Garison of Nuys shall not be thrown into the other two Places, nor nothing demanded on that account; and the Garisons of Cuesfeldt shall not exceed the Number of Six Hundred Foot and Fifty Horse. That if within the term of nine Months, the whole Sum be not paid to Madam the Landgravine, not only Cuesfeldt and Newhaus shall remain in her Hands till the full Payment, but also for the remainder, she shall be paid Interest at Five per Cent. and the Treasurers and Collectors of the Bayliwicks appertaining to the abovesaid Arch-bishopricks, Bishopricks and Abby, bordering on the Principality of Hesse, shall oblige themselves by Oath to Madam the Landgravine, that out of the annual Revenues, they shall yearly pay the Interest of the remaining Sum notwithstanding the Prohibitions of their Masters. If the Treasurers and Collectors delay the Payment, or alienate the Revenues, Madam the Landgravine shall have liberty to constrain them to pay, by all sorts of means, always saving the Right of the Lord Proprietor of the Territory.

#### LVII.

But as soon as Madam the Landgravine has receiv'd the full Sum, with all the Interest, she shall surrender the said Places which she retain'd for her Security; the Payments shall cease, and the Treasurers and Collectors, of which mention has been made, shall be freed, from their Oath: As for the Bayliwicks, the Revenues of which shall be assign'd for the Payment of the Sum, that shall be adjusted before the Ratification of the Peace; and that Convention shall be of no less Force than this present Treaty of Peace.

#### LVIII.

Besides the Places of Surety, which shall be left, as aforesaid, to Madam the Landgravine, which she shall restore after the Payment, she shall restore, after the Ratification of the Peace, all the Provinces and Bishopricks, as also all their Citys, Bayliwicks, Boroughs, Fortresses, Forts; and in one word, all immoveable Goods, and all Rights seiz'd by her during this War. So, nevertheless, that as well in the three Places she shall retain as Cautionary, as the others to be restor'd, the said Lady Landgravine not only shall cause to be convey'd away all the Provisions and Ammunitions of War she has put therein (for as to those she has not sent thither, and what was found there at the taking of

them, and are there still, they shall continue; ) but also the Fortifications and Ramparts, rais'd during the Possession of the Places, shall be destroy'd and demolish'd as much as possible, without exposing the Towns, Borroughs, Castles and Fortresses, to Invasions and Robberys.

### LIX.

And tho Madam the Landgravine has only demanded Restitution and Reparation of the Arch-bishopricks of Mayence, Cologne, Paderborn, Munster, and the Abby of Fulden; and has not insisted that any besides should contribute any thing for this Purpose: nevertheless the Assembly have thought fit, according to the Equity and Circumstances of Affairs, that without prejudice to the Contents of the preceding Paragraph, which begins, *Conventum praterea est, &c.* IT HAS BEEN FURTHER AGREED, the other States also on this and the other side the Rhine, and who since the first of March of this present Year, have paid Contributions to the Hessians, shall bear their Proportion pro Rata of their preceding Contributions, to make up the said Sum with the Arch-bishopricks, Bishopricks and Abby above-named, and forward the Payments of the Garisons of the Cautionary Towns. If any has suffer'd Damage by the delay of others, who are to pay their share, the Officers or Soldiers of his Imperial Majesty, of the most Christian King, and of the Landgravine of Hesse, shall not hinder the forcing of those who have been tardy; and the Hessian Soldiers shall not pretend to except any from this Constraint, to the prejudice of this Declaration, but those who have duly paid their Proportion, shall thereby be freed from all Charges.

### LX.

As to the Differences arisen between the Houses of Hesse Cassel, and of Darmstadt, touching the Succession of Marburg; since they have been adjusted at Cassel, the 14<sup>th</sup> of April, the preceding Year, by the mutual Consent of the Interested Partys, it has been thought good, that that Transaction, with all its Clauses, as concluded and sign'd at Cassel by both Partys, should be intimated to this Assembly; and that by virtue of this present Treaty, it shall be of the same force, as if inserted word by word: and the same shall never be infring'd by the Partys, nor any other whatsoever, under any pretence, either by Contract, Oath, or otherways, but ought to be most exactly kept by all, tho perhaps some of the Partys concern'd may refuse to confirm it.

### LXI.

As also the Transaction between the Deceas'd monsieur William, Landgrave of Hesse, and Messieurs Christian and Wolrad, Counts of Waldeck, made the 11<sup>th</sup> of April, 1635. and ratify'd to Monsieur George, Landgrave of Hesse, the 14<sup>th</sup> of April 1648. shall no less obtain a full and perpetual force by virtue of this Pacification, and shall no less bind all the Princes of Hesse, and all the Counts of Waldeck.



**LXII.**

That the Birth-right introduc'd in the House of Hesse Cassel, and in that of Darmstadt, and confirm'd by His Imperial Majesty, shall continue and be kept firm and inviolable.

**LXIII.**

And as His Imperial Majesty, upon Complaints made in the name of the City of Basle, and of all Switzerland, in the presence of their Plenipotentiarys deputed to the present Assembly, touching some Procedures and Executions proceeding from the Imperial Chamber against the said City, and the other united Cantons of the Swiss Country, and their Citizens and Subjects having demanded the Advice of the States of the Empire and their Council; these have, by a Decree of the 14<sup>th</sup> of May of the last Year, declared the said City of Basle, and the other Swiss-Cantons, to be as it were in possession of their full Liberty and Exemption of the Empire; so that they are no ways subject to the Judicatures, or Judgments of the Empire, and it was thought convenient to insert the same in this Treaty of Peace, and confirm it, and thereby to make void and annul all such Procedures and Arrests given on this Account in what form soever.

**LXIV.**

And to prevent for the future any Differences arising in the Politick State, all and every one of the Electors, Princes and States of the Roman Empire, are so establish'd and confirm'd in their antient Rights, Prerogatives, Libertys, Privileges, free exercise of Territorial Right, as well Ecclesiastick, as Politick Lordships, Regales, by virtue of this present Transaction: that they never can or ought to be molested therein by any whomsoever upon any manner of pretence.

**LXV.**

They shall enjoy without contradiction, the Right of Suffrage in all Deliberations touching the Affairs of the Empire; but above all, when the Business in hand shall be the making or interpreting of Laws, the declaring of Wars, imposing of Taxes, levying or quartering of Soldiers, erecting new Fortifications in the Territorys of the States, or reinforcing the old Garisons; as also when a Peace of Alliance is to be concluded, and treated about, or the like, none of these, or the like things shall be acted for the future, without the Suffrage and Consent of the Free Assembly of all the States of the Empire: Above all, it shall be free perpetually to each of the States of the Empire, to make Alliances with Strangers for their Preservation and Safety; provided, nevertheless, such Alliances be not against the Emperor, and the Empire, nor against the Publick Peace, and this Treaty, and without prejudice to the Oath by which every one is bound to the Emperor and the Empire.

**LXVI.**

That the Diets of the Empire shall be held within six Months after the Ratification of the Peace; and after that time as often as the Publick Utility, or Necessity requires. That in the first Diet the Defects of precedent Assemblys be chiefly remedy'd; and that then also be treated and settled by common Consent of the States, the Form and Election of the Kings of the Romans, by a Form, and certain Imperial Resolution; the Manner and Order which is to be observ'd for declaring one or more States, to be within the Territorys of the Empire, besides the Manner otherways describ'd in the Constitutions of the Empire; that they consider also of re-establishing the Circles, the renewing the Matricular-Book, the re-establishing suppress'd States, the moderating and lessening the Collects of the Empire, Reformation of Justice and Policy, the taxing of Fees in the Chamber of Justice, the Due and requisite instructing of ordinary Deputys for the Advantage of the Publick, the true Office of Directors in the Colleges of the Empire, and such other Business as could not be here expedited.

**LXVII.**

That as well as general as particular Diets, the free Towns, and other States of the Empire, shall have decisive Votes; they shall, without molestation, keep their Regales, Customs, annual Revenues, Libertys, Privileges to confiscate, to raise Taxes, and other Rights, lawfully obtain'd from the Emperor and Empire, or enjoy'd long before these Commotions, with a full Jurisdiction within the inclosure of their Walls, and their Territorys: making void at the same time, annulling and for the future prohibiting all Things, which by Reprisals, Arrests, stopping of Passages, and other prejudicial Acts, either during the War, under what pretext soever they have been done and attempted hitherto by private Authority, or may hereafter without any preceding formality of Right be enterpris'd. As for the rest, all laudable Customs of the sacred Roman Empire, the fundamental Constitutions and Laws, shall for the future be strictly observ'd, all the Confusions which time of War have, or could introduce, being remov'd and laid aside.

**LXVIII.**

As for the finding out of equitable and expedient means, whereby the Prosecution of Actions against Debtors, ruin'd by the Calamitys of the War, or charg'd with too great Interests, and whereby these Matters may be terminated with moderation, to obviate greater inconveniences which might arise, and to provide for the publick Tranquillity; His Imperial Majesty shall take care to hearken as well to the Advices of his Privy Council, as of the Imperial Chamber, and the States which are to be assembled, to the end that certain firm and invariable Constitutions may be made about this Matter And in the mean time the alledg'd Reasons and Circumstances of the Partys shall be well weigh'd in Cases brought before the Sovereign Courts of the Empire, or Subordinate

ones of States and no body shall be oppress'd by immoderate Executions; and ail this without prejudice to the Constitution of Holstein.

### LXIX.

And since it much concerns the Publick, that upon the Conclusion of the Peace, Commerce be re-establish'd, for that end it has been agreed, that the Tolls, Customs, as also the Abuses of the Bull of Brabant, and the Reprisals and Arrests, which proceeded from thence, together with foreign Certifications, Exactions, Detensions; Item, The immoderate Expences and Charges of Posts, and other Obstacles to Commerce and Navigation introduc'd to its Prejudice, contrary to the Publick Benefit here and there, in the Empire on occasion of the War, and of late by a private Authority against its Rights and Privileges, without the Emperor's and Princes of the Empire's consent, shall be fully remov'd; and the antient Security, Jurisdiction and Custom, such as have been long before these Wars in use, shall be re-establish'd and inviolably maintain'd in the Provinces, Ports and Rivers.

### LXX.

The Rights and Privileges of Territorys, water'd by Rivers or otherways, as Customs granted by the Emperor, with the Consent of the Electors, and among others, to the Count of Oldenburg on the Viserg, and introduc'd by a long Usage, shall remain in their Vigour and Execution. There shall be a full Liberty of Commerce, a secure Passage by Sea and Land: and after this manner all and every one of the Vassals, Subjects, Inhabitants and Servants of the Allys, on the one side and the other, shall have full power to go and come, to trade and return back, by Virtue of this present Article, after the same manner as was allowed before the Troubles of Germany; the Magistrates, on the one side and on the other, shall be oblig'd to protect and defend them against all sorts of Oppressions, equally with their own Subjects, without prejudice to the other Articles of this Convention, and the particular laws and Rights of each place. And that the said Peace and Amity between the Emperor and the Most Christian King, may be the more corroborated, and the publick Safety provided for, it has been agreed with the Consent, Advice and Will of the Electors, Princes and States of the Empire, for the Benefit of Peace:

### LXXI.

First, That the chief Dominion, Right of Sovereignty, and all other Rights upon the Bishopricks of Metz, Toul, and Verdun, and on the Cities of that Name and their Diocesses, particularly on Mayenvick, in the same manner they formerly belong'd to the Emperor, shall for the future appertain to the Crown of France, and shall be irrevocably incorporated therewith for ever, saving the Right of the Metropolitan, which belongs to the Archbishop of Treves.

**LXXII.**

That Monsieur Francis, Duke of Lorain, shall be restor'd to the possession of the Bishoprick of Verdun, as being the lawful Bishop thereof; and shall be left in the peaceable Administration of this Bishoprick and its Abbys (saving the Right of the King and of particular Persons) and shall enjoy his Patrimonial Estates, and his other Rights, wherever they may be situated (and as far as they do not contradict the present Resignation) his Privileges, Revenues and Incomes; having previously taken the Oath of Fidelity to the King, and provided he undertakes nothing against the Good of the State and the Service of his Majesty.

**LXXIII.**

In the second place, the Emperor and Empire resign and transfer to the most Christian King, and his Successors, the Right of direct Lordship and Sovereignty, and all that has belong'd, or might hitherto belong to him, or the sacred Roman Empire, upon Pignerol.

**LXXIV.**

In the third place the Emperor, as well in his own behalf, as the behalf of the whole most Serene House of Austria, as also of the Empire, resigns all Rights, Propertys, Domains, Possessions and Jurisdictions, which have hitherto belong'd either to him, or the Empire, and the Family of Austria, over the City of Brisac, the Landgraveship of Upper and Lower Alsatia, Suntgau, and the Provincial Lordship of ten Imperial Citys situated in Alsatia, viz. Haguenau, Calmer, Sclestadt, Weisemburg, Landau, Oberenheim, Rosheim, Munster in the Valley of St. Gregory, Keyerberg, Turingham, and of all the villages, or other Rights which depend on the said Mayoralty; all and every of them are made over to the most Christian King, and the Kingdom of France; in the same manner as the City of Brisac, with the Villages of Hochstet, Niederrimsing, Hartem and Acharren appertaining to the Commonalty of Brisac, with all the antient Territory and Dependence; without any prejudice, nevertheless, to the Privileges and Libertys granted the said Town formerly by the House of Austria.

**LXXV.**

Item, The said Landgraveship of the one, and the other Alsatia, and Suntgau, as also the Provincial Mayoralty on the ten Citys nominated, and their Dependencyes.

**LXXVI.**

Item, All the Vassals, Subjects, People, Towns, Boroughs, Castles, Houses, Fortresses, Woods, Coppices, Gold or Silver Mines, Minerals, Rivers, Brooks, Pastures; and in a word, all the Rights, Regales and Appurtenances, without any reserve, shall belong to the most Christian King, and shall be for ever incorporated with the Kingdom

France, with all manner of Jurisdiction and Sovereignty, without any contradiction from the Emperor, the Empire, House of Austria, or any other: so that no Emperor, or any Prince of the House of Austria, shall, or ever ought to usurp, nor so much as pretend any Right and Power over the said Countrys, as well on this, as the other side the Rhine.

#### LXXVII.

The most Christian King shall, nevertheless, be oblig'd to preserve in all and every one of these Countrys the Catholick Religion, as maintain'd under the Princes of Austria, and to abolish all Innovations crept in during the War.

#### LXXVIII.

Fourthly, By the Consent of the Emperor and the whole Empire, the most Christian King and his Successors shall have perpetual Right to keep a Garison in the Castle of Philipsburg, but limited to such a number of Soldiers, as may not be capable to give any Umbrage, or just Suspicion to the Neighbourhood; which Garison shall be maintain'd at the Expences of the Crown of France. The Passage also shall be open for the King into the Empire by Water, when, and as often as he shall send Soldiers, Convoys, and bring necessary things thither.

#### LXXIX.

Nevertheless the King shall pretend to nothing more than the Protection and safe Passage of his Garison into the Castle of Philipsburg: but the Property of the Place, all Jurisdiction, Possession, all its Profits, Revenues, Purchases, Rights, Regales, Servitude, People, Subjects, Vassals, and every thing that of old in the Bishoprick of Spire, and the Churches incorporated therein, had appertain'd to the Chapter of Spire, or might have appertain'd thereto; shall appertain, and be intirely and inviolably preserv'd to the same Chapter, saving the Right of Protection which the King takes upon him.

#### LXXX.

The Emperor, Empire, and Monsieur the Arch Duke of Insprug, Ferdinand Charles, respectively discharge the Communitys, Magistrates, Officers and Subjects of each of the said Lordships and Places, from the Bonds and Oaths which they were hitherto bound by, and ty'd to the House of Austria; and discharge and assign them over to the Subjection, Obedience and Fidelity they are to give to the King and Kingdom of France; and consequently confirm the Crown of France in a full and just Power over all the said Places, renouncing from the present, and for ever, the Rights and Pretensions they had thereunto: Which Cession the Emperor, the said Arch-Duke and his Brother (by reason the said Renunciation concerns them particularly) shall confirm by particular Letters for themselves and their Descendants; and shall so order

it also, that the Catholick King of Spain shall make the same Renunciation in due and authentick form, which shall be done in the name of the whole Empire, the same Day this present Treaty shall be sign'd.

#### **LXXXI.**

For the greater Validity of the said Cessions and Alienations, the Emperor and Empire, by virtue of this present Treaty, abolish all and every one of the Decrees, Constitutions, Statutes and Customs of their Predecessors, Emperors of the sacred Roman Empire, tho they have been confirm'd by Oath, or shall be confirm'd for the future; particularly this Article of the Imperial Capitulation, by which all or any Alienation of the Appurtenances and Rights of the Empire is prohibited: and by the same means they exclude for ever all Exceptions hereunto, on what Right and Titles soever they may be grounded.

#### **LXXXII.**

Further it has been agreed, That besides the Ratification promis'd hereafter in the next Diet by the Emperor and the States of the Empire, they shall ratify anew the Alienations of the said Lordships and Rights: insomuch, that if it shou'd be agreed in the Imperial Capitulation, or if there shou'd be a Proposal made for the future, in the Diet, to recover the Lands and Rights of the Empire, the abovenam'd things shall not be comprehended therein, as having been legally transfer'd to another's Dominion, with the common Consent of the States, for the benefit of the publick Tranquillity; for which reason it has been found expedient the said Seigniorys shou'd be ras'd out of the Matricular-Book of the Empire.

#### **LXXXIII.**

Immediately after the Restitution of Benfield, the Fortifications of that Place shall be ras'd, and of the Fort Rhinau, which is hard by, as also of Tabern in Alsatia, of the Castle of Hohember and of Newburg on the Rhine: and there shall be in none of those Places any Soldiers or Garison.

#### **LXXXIV.**

The Magistrates and the Inhabitants of the said City of Tabern shall keep an exact Neutrality, and the King's Troops shall freely pass thro' there as often as desir'd. No Forts shall be erected on the Banks of this side the Rhine, from Basle to Philipsburg; nor shall any Endeavours be made to divert the Course of the River, neither on the one side or the other.

**LXXXV.**

As for what concerns the Debts wherewith the Chamber of Ensisheim is charg'd, the Arch-Duke Ferdinand Charles shall undertake with that part of the Province, which the most Christian King shall restore him, to pay one third without distinction, whether they be Bonds, or Mortgages; provided they are in authentick form, and that they have a particular Mortgage, either on the Provinces to be restor'd, or on them which are to be transfer'd; or if there be none, provided they be found on the Books of Accounts, agreeing with those of Receipts of the Chamber of Ensisheim, until the Expiration of the year 1632, and have been inserted amongst the Debts of the publick Chamber, and the said Chamber having been oblig'd to pay the Interests: the Arch-Duke making this Payment, shall keep the King exempt from the same.

**LXXXVI.**

And as for those Debts which the Colleges of the States have been charg'd with by the Princes of the House of Austria, pursuant to particular Agreements made in their Provincial Assemblies, or such as the said States have contracted in the name of the Publick, and to which they are liable; a just distribution of the same shall be made between those who are to transfer their Allegiance to the King of France, and them that continue under the Obedience of the House of Austria, that so either Party may know what proportion of the said Debt he is to pay.

**LXXXVII.**

The most Christian King shall restore to the House of Austria, and particularly to the Arch-Duke Ferdinand Charles, eldest Son to Arch-Duke Leopold, four Forest-Towns, viz. Rheinselden, Seckingen, Laussenberg and Waltshutum, with all their Territorys and Bayliwicks, Houses, Villages, Mills, Woods, Forests, Vassals, Subjects, and all Appurtenances on this, or the other side the Rhine.

**LXXXVIII.**

Item, The County of Hawenstein, the Black Forest, the Upper and Lower Brisgaw, and the Towns situate therein, appertaining of Antient Right to the House of Austria, viz. Neuburg, Friburg, Edingen, Renzingen, Waldkirch, Willingen, Bruenlingen, with all their Territorys; as also, the Monasterys, Abbys, Prelacys, Deaconrys, Knight-Fees, Commanderships, with all their Bayliwicks, Baronys, Castles, Fortresses, Countys, Barons, Nobles, Vassals, Men, Subjects, Rivers, Brooks, Forests, Woods, and all the Regales, Rights, Jurisdictions, Fiefs and Patronages, and all other things belonging to the Sovereign Right of Territory, and to the Patrimony of the House of Austria, in all that Country.

**LXXXIX.**

All Ortnaw, with the Imperial Citys of Ossenburg, Gengenbach, Cellaham and Harmospach, forasmuch as the said Lordships depend - on that of Ortnaw, so that no King of France can or ought ever to ; pretend to or usurp any Right or Power over the said Country situated on this and the other side the Rhine: nevertheless, in such a manner, that by this present Restitution, the Princes of Austria shall acquire no new Right; that for the future, the Commerce and Transportation shall be free to the Inhabitants on both sides of the Rhine, and the adjacent Provinces. Above all, the Navigation of the Rhine be free, and none of the partys shall be permitted to hinder Boats going up or coming down, detain, stop, or molest them under any pretence whatsoever, except the Inspection and Search which is usually done to Merchandizes: And it shall not be permitted to impose upon the Rhine new and unwonted Tolls, Customs, Taxes, Imposts, and other like Exactions; but the one and the other Party shall contented with the Tributes, Dutys and Tolls that were paid before these Wars, under the Government of the Princes of Austria.

**XC.**

That all the Vassals, Subjects, Citizens and Inhabitants, as well on this as the other side the Rhine, who were subject to the House of Austria, or who depended immediately on the Empire, or who acknowledg'd for Superiors the other Orders of the Empire, notwithstanding all Confiscations, Transferrings, Donations made by any Captains or Generals of the Swedish Troops, or Confederates, since the taking of the Province, and ratify'd by the most Christian King, or decreed by his own particular Motion; immediately after the Publication of Peace, shall be restor'd to the possession of their Goods, immovable and stable, also to their Farms, Castles, Villages, Lands, and Possessions, without any exception upon the account of Expences and Compensation of Charges, which the modern Possessors may alledge, and without Restitution of Movables or Fruits gather'd in.

**XCI.**

As to Confiscations of Things, which consist in Weight, Number and Measure, Exactions, Concussions and Extortions made during the War; the reclaiming of them is fully annull'd and taken away on the one side and the other, in order to avoid Processes and litigious Strifes.

**XCII.**

That the most Christian King shall be bound to leave not only the Bishops of Strasburg and Basle, with the City of Strasburg, but also the other States or Orders, Abbots of Murbach and Luederen, who are in the one and the other Alsatia, immediately depending upon the Roman Empire; the Abess of Andlavien, the Monastery of St.



Bennet in the Valley of St. George, the Palatines of Luzelstain, the Counts and Barons of Hanaw, Fleckenstein, Oberstein, and all the nobility of Lower Alsatia; Item, the said ten Imperial Citys, which depend on the Mayory of Haganoc, in the Liberty and Possession they have enjoy'd hitherto, to arise as immediately dependent upon the Roman Empire; so that he cannot pretend any Royal Superiority over them, but shall rest contented with the Rights which appertain'd to the House of Austria, and which by this present Treaty of Pacification, are yielded to the Crown of France. In such a manner, nevertheless, that by the present Declaration, nothing is intended that shall derogate from the Sovereign Dominion already hereabove agreed to.

### **XCIII.**

Likewise the most Christian King, in compensation of the things made over to him, shall pay the said Archduke Ferdinand Charles three millions of French Livres, in the next following Years 1649 1650, 1651, on St. John Baptist's Day, paying yearly one third of the said Sum at Basle in good Money to the Deputys of the said Archduke.

### **XCIV.**

Besides the said Sum, the most Christian King shall be oblig'd to take upon him two Thirds of the Debts of the Chamber of Ensisheim without distinction, whether by Bill or Mortgage, provided they be in due and authentic Form, and have a special Mortgage either on the Provinces to be transfer'd, or on them to be restor'd; or if there be none, provided they be found on the Books of Accounts agreeing with those of the Receipts of the Chamber of Ensisheim, until the end of the Year 1632, the said Sums having been inserted among the Debts of the Community, and the Chamber having been oblig'd to pay the Interests: And the King making this Payment, the Archduke shall be exempted for such a proportion. And that the same may be equitably executed, Commissarys shall be deputed on the one side and the other, immediately after the signing of this present Treaty, who before the Payment of the first Sum, shall agree between them what Debts every one has to pay.

### **XCV.**

The most Christian King shall restore to the said Archduke bona fide, and without delay, all Papers, Documents of what nature so-ever, belonging to the Lands which are to be surrender'd to him, even as many as shall be found in the Chancery of the Government and Chamber of Ensisheim, or of Brisac, or in the Records of Officers, Towns, and Castles possess'd by his Arms.

### **XCVI.**

If those Documents be publick, and concern in common and jointly the Lands yielded to the King, the Archduke shall receive authentick Copys of them, at what time and as often as he shall demand them.

**XCVII.**

Item, For fear the Differences arisen between the Dukes of Savoy and Mantua touching Montserrat, and terminated by the Emperor Ferdinand and Lewis XIII. Fathers to their Majestys, shou'd revive some time or other to the damage or Christianity; it has been agreed, That the Treaty of Cheras of the 6<sup>th</sup> of April 1631. with the Execution thereof which ensu'd in the Montserrat, shall continue firm for ever, with all its Articles: Pignerol, and its Appurtenances, being nevertheless excepted, concerning which there has been a decision between his most Christian Majesty and the Duke of Savoy, and which the King of France and his Kingdom have purchas'd by particular Treatys, that shall remain firm and stable, as to what concerns the transferring or resigning of that Place and its Appurtenances. But if the said particular Treatys contain any thing which may trouble the Peace of the Empire, and excite new Commotions in Italy, after the present War, which is now on foot in that Province, shall be at an end, they shall be look'd upon as void and of no effect; the said Cession continuing nevertheless unviolable, as also the other Conditions agreed to, as well in favour of the Duke of Savoy as the most Christian King: For which reason their Imperial and most Christian Majestys promise reciprocally, that in all other things relating to the said Treaty of Cheras, and its Execution, and particularly to Albe, Trin, their Territorys, and the other places, they never shall contravene them either directly or indirectly, by the way of Right or in Fact; and that they neither shall succour nor countenance the Offender, but rather by their common Authority shall endeavour that none violate them under any pretence whatsoever; considering that the most Christian King has declar'd, That he was highly oblig'd to advance the Execution of the said Treaty, and even to maintain it by Arms; that above all things the said Lord, the Duke of Savoy, notwithstanding the Clauses abovemention'd, shall be always maintain'd in the peaceable possession of Trin and Albe, and other places, which have been allow'd and assign'd him by the said Treaty, and by the Investiture which ensu'd thereon of the Dutchy of Montserrat.

**XCVIII.**

And to the end that all Differences be extirpated and rooted out between these same Dukes, his most Christian Majesty shall pay to the said Lord, the Duke of Mantua, four hundred ninety four thousand Crowns, which the late King of blessed Memory, Lewis XIII. had promis'd to pay to him on thu Duke of Savoy's Discount; who by this means shall together with his Heirs and Successors be discharg'd from this Obligation, and secur'd from all Demands which might be made upon him of the said Sum, by the Duke of Mantua, or his Successors; so that for the future neither the Duke of Savoy, nor his Heirs and Successors, shall receive any Vexation or Trouble from the Duke of Mantua, his Heirs and Successors, upon this subject, or under this pretence.

**XCIX.**

Who hereafter, with the Authority and Consent of their Imperial and most Christian Majestys, by virtue of this solemn Treaty of Peace, shall have no Action for this account against the Duke of Savoy, or his Heirs and Successors.

**C.**

His Imperial Majesty, at the modest Request of the Duke of Savoy, shall together with the Investiture of the antient Fiefs and States, which the late Ferdinand II. of blessed memory granted to the Duke of Savoy, Victor Amadeus, also grant him the Investiture of the Places, Lordships, States, and all other Rights of Montserrat, with their Appurtenances, which have been surrender'd to him by virtue of the abovesaid Treaty of Cheras, and the Execution thereof which ensu'd; as also, of the Fiefs of New Monsort, of Sine, Monchery, and Castelles, with their Appurtenances, according to the Treaty of Acquisition made by the said Duke Victor Amadeus, the 13<sup>th</sup> of October 1634. and conformable to the Concessions or Permissions, and Approbation of his Imperial Majesty; with a Confirmation also of all the Privileges which have been hitherto granted to the Dukes of Savoy, when and as often as the Duke of Savoy shall request and demand it.

**CI.**

Item, It has been agreed, That the Duke of Savoy, his Heirs and Successors, shall no ways be troubled or call'd to an account by his Imperial Majesty, upon account of the Right of Sovereignty they have over the Fiefs of Rocheveran, Olme, and Casoles, and their Appurtenances, which do not in the least depend on the Roman Empire, and that all Donations and Investitures of the said Fiefs being revok'd and annul'd, the Duke shall be maintain'd in his Possession as rightful Lord; and if need be, reinstated: for the same reason his Vassal the Count de Verrue shall be re-instated in the same Fiefs of Olme and Casoles, and in the Possession of the fourth part of Rocheveran, and in all his Revenues.

**CII.**

Item, It is Agreed, That his Imperial Majesty shall restore to the Counts Clement and John Sons of Count Charles Cacheran, and to his Grandsons by his Son Octavian, the whole Fief of la Roche d'Arazy, with its Appurtenances and Dependencys, without any Obstacle whatever.

**CIII.**

The Emperor shall likewise declare, That within the Investiture of the Dutchy of Mantua are comprehended the Castles of Reygioli and Luzzare, with their Territorys and Dependencys, the Possession whereof the Duke of Guastalla shall be oblig'd to render to the Duke of Mantua, reserving to himself nevertheless, the Right of Six Thousand

Crowns annual Pension, which he pretends to, for which he may sue the Duke before his Imperial Majesty.

#### CIV.

As soon as the Treaty of Peace shall be sign'd and seal'd by the Plenipotentiarys and Ambassadors, all Hostilities shall cease, and all Partys shall study immediately to put in execution what has been agreed to; and that the same may be the better and quicker accomplish'd, the Peace shall be solemnly publish'd the day after the signing thereof in the usual form at the Cross of the Citys of Munster and of Osnabrug. That when it shall be known that the signing has been made in these two Places, divers Couriers shall presently be sent to the Generals of the Armys, to acquaint them that the Peace is concluded, and take care that the Generals chuse a Day, on which shall be made on all sides a Cessation of Arms and Hostilities for the publishing of the Peace in the Army; and that command be given to all and each of the chief Officers Military and Civil, and to the Governors of Fortresses, to abstain for the future from all Acts of Hostility: and if it happen that any thing be attempted, or actually innovated after the said Publication, the same shall be forthwith repair'd and restor'd to its former State.

#### CV.

The Plenipotentiarys on all sides shall agree among themselves, between the Conclusion and the Ratification of the Peace, upon the Ways, Time, and Securitys which are to be taken for the Restitution of Places, and for the Disbanding of Troops; of that both Partys may be assur'd, that all things agreed to shall be sincerely accomplish'd.

#### CVI.

The Emperor above all things shall publish an Edict thro'out the Empire, and strictly enjoin all, who by these Articles of Pacification are oblig'd to restore or do any thing else, to obey it promptly and without tergiversation, between the signing and the ratifying of this present Treaty; commanding as well the Directors as Governors of the Militia of the Circles, to hasten and finish the Restitution to be made to every one, in conformity to those Conventions, when the same are demanded. This Clause is to be inserted also in the Edicts, That whereas the Directors of the Circles, or the Governors of the Militia of the Circles, in matters that concern themselves, are esteem'd less capable of executing this Affair in this or the like case and likewise if the Directors and Governors of the Militia of the Circles refuse this Commission, the Directors of the neighbouring Circle, or the Governors of the Militia of the Circles shall exercise the Function, and officiate in the execution of these Restitutions in the other Circles, at the instance of the Partys concern'd.

**CVII.**

If any of those who are to have something restor'd to them, suppose that the Emperor's Commissarys are necessary to be present at the Execution of some Restitution (which is left to their Choice) they shall have them. In which case, that the effect of the things agreed on may be the less hinder'd, it shall be permitted as well to those who restore, as to those to whom Restitution is to be made, to nominate two or three Commissarys immediately after the signing of the Peace, of whom his Imperial Majesty shall chuse two, one of each Religion, and one of each Party, whom he shall injoin to accomplish without delay all that which ought to be done by virtue of this present Treaty. If the Restorers have neglected to nominate Commissioners, his Imperial Majesty shall chuse one or two as he shall think fit (observing, nevertheless, in all cases the difference of Religion, that an equal number be put on each side) from among those whom the Party, to which somewhat is to be restor'd, shall have nominated, to whom he shall commit the Commission of executing it, notwithstanding all Exceptions made to the contrary; and for those who pretend to Restitutions, they are to intimate to the Restorers the Tenour of these Articles immediately after the Conclusion of the Peace.

**CVIII.**

Finally, That all and every one either States, Commonaltys, or private Men, either Ecclesiastical or Secular, who by virtue of this Transaction and its general Articles, or by the express and special Disposition of any of them, are oblig'd to restore, transfer, give, do, or execute any thing, shall be bound forthwith after the Publication of the Emperor's Edicts, and after Notification given, to restore, transfer, give, do, or execute the same, without any Delay or Exception, or evading Clause either general or particular, contain'd in the precedent Amnesty, and without any Exception and Fraud as to what they are oblig'd unto.

**CIX.**

That none, either Officer or Soldier in Garisons, or any other whatsoever, shall oppose the Execution of the Directors and Governors of the Militia of the Circles or Commissarys, but they shall rather promote the Execution; and the said Executors shall be permitted to use Force against such as shall endeavour to obstruct the Execution in what manner soever.

**CX.**

Moreover, all Prisoners on the one side and the other, without any distinction of the Gown or the Sword, shall be releas'd after the manner it has been covenanted, or shall be agreed between the Generals of the Armys, with his Imperial Majesty's Approbation.

The Restitution being made pursuant to the Articles of Amnesty and Grievances, the Prisoners being releas'd, all the Soldiery of the Garisons, as well the Emperor's and

his Allys, as the most Christian King's, and of the Landgrave of Hesse, and their Allys and Adherents, or by whom they may have been put in, shall be drawn out at the same time, without any Damage, Exception, or Delay, of the Citys of the Empire, and all other Places which are to be restor'd.

#### **CXII.**

That the very Places, Citys, Towns, Boroughs, Villages, Castles, Fortresses and Forts which have been possess'd and retain'd, as well in the Kingdom of Bohemia, and other Countrys of the Empire and Hereditary Dominions of the House of Austria, as in the other Circles of the Empire, by one or the other Army, or have been surrender'd by Composition; shall be restor'd without delay to their former and lawful Possessors and Lords, whether they be mediately or immediately States of the Empire, Ecclesiastical or Secular, comprehending therein also the free Nobility of the Empire: and they shall be left at their own free disposal, either according to Right and Custom, or according to the Force this present Treaty ought to have, notwithstanding all Donations, Infeoffments, Concessions (except they have been made by the free-will of some State) Bonds for redeeming of Prisoners, or to prevent Burnings and Pillages, or such other like Titles acquir'd to the prejudice of the former and lawful Masters and Possessors. Let also all Contracts and Bargains, and all Exceptions contrary to the said Restitution cease, all which are to be esteem'd void; saving nevertheless such things as have been otherwise agreed on in the precedent Articles touching the Satisfaction to made to his most Christian Majesty, as also some Concessions and equivalent Compensations granted to the Electors and Princes of the Empire. That neither the Mention of the Catholick King, nor Quality of the Duke of Lorain given to Duke Charles in the Treaty between the Emperor and Swedeland, and much less the Title of Landgrave of Alsace, given to the Emperor, shall be any prejudice to the most Christian King. That also which has been agreed touching the Satisfaction to be made to the Swedish Troops, shall have no effect in respect to his Majesty.

#### **CXIII.**

And that this Restitution of possess'd Places, as well by his Imperial Majesty as the most Christian King, and the Allys and Adherents of the one and the other Party, shall be reciprocally and bona fide executed.

#### **CXIV.**

That the Records, Writings and Documents, and other Moveables, be also restor'd; as likewise the Cannon found at the taking of the Places, and which are still in being. But they shall be allow'd to carry off with them, and cause to be carry'd off, such as have been brought thither from other parts after the taking of the Places, or have been taken in Battels, with all the Carriages of War, and what belongs thereunto.

**CXV.**

That the Inhabitants of each Place shall be oblig'd, when the Soldiers and Garisons draw out, to furnish them without Money the necessary Waggons, Horses, Boats and Provisions, to carry off all things to the appointed Places in the Empire; which Waggons, Horses and Boats, the Governors of the Garisons and the Captains of the withdrawing Soldiers shall restore without any Fraud or Deceit. The Inhabitants of the States shall free and relieve each other of this trouble of carrying the things from one Territory to the other, until they arrive at the appointed Place in the Empire; and the Governors or other Officers shall not be allow'd to bring with him or them the lent Waggons, Horses and Boats, nor any other thing they are accommodated with, out of the limits they belong unto, much less out of those of the Empire.

**CXVI.**

That the Places which have been restor'd, as, well Maritime as Frontiers, or in the heart of the Country shall from henceforth and for ever be exempted from all Garisons, introduc'd during the Wars, and left (without prejudice in other things to every one's Right) at the full liberty and disposal of their Masters.

**CXVII.**

That it shall not for the future, or at present, prove to the damage and prejudice of any Town, that has been taken and kept by the one or other Party; but that all and every one of them, with their Citizens and Inhabitants, shall enjoy as well the general Benefit of the Amnesty, as the rest of this Pacification. And for the Remainder of their Rights and Privileges, Ecclesiastical and Secular, which they enjoy'd before these Troubles, they shall be maintain'd therein; save, nevertheless the Rights of Sovereignty, and what depends thereon, for the Lords to whom they belong.

**CXVIII.**

Finally, that the Troops and Armys of all those who are making War in the Empire, shall be disbanded and discharg'd; only each Party shall send to and keep up as many Men in his own Dominion, as he shall judge necessary for his Security.

**CXIX.**

The Ambassadors and Plenipotentiarys of the Emperor, of the King, and the States of the Empire, promise respectively and the one to the other, to cause the Emperor, the most Christian King, the Electors of the Sacred Roman Empire, the Princes and States, to agree and ratify the Peace which has been concluded in this manner, and by general Consent; and so infallibly to order it, that the solemn Acts of Ratification be presented at Munster, and mutually and in good form exchange'd in the term of eight weeks, to reckon from the day of signing.

**CXX.**

For the greater Firmness of all and every one of these Articles, this present Transaction shall serve for a perpetual Law and establish'd Sanction of the Empire, to be inserted like other fundamental Laws and Constitutions of the Empire in the Acts of the next Diet of the Empire, and the Imperial Capitulation; binding no less the absent than the present, the Ecclesiasticks than Seculars, whether they be States of the Empire or not: insomuch as that it shall be a prescrib'd Rule, perpetually to be follow'd, as well by the Imperial Counsellors and Officers, as those of other Lords, and all Judges and Officers of Courts of Justice.

**CXXI.**

That it never shall be alledg'd, allow'd, or admitted, that any Canonical or Civil Law, any general or particular Decrees of Councils, any Privileges, any Indulgences, any Edicts, any Commissions, Inhibitions, Mandates, Decrees, Rescripts, Suspensions of Law, Judgments pronounc'd at any time, Adjudications, Capitulations of the Emperor, and other Rules and Exceptions of Religious Orders, past or future Protestations, Contradictions, Appeals, Investitures, Transactions, Oaths, Renunciations, Contracts, and much less the Edict of 1629. or the Transaction of Prague, with its Appendixes, or the Concordates with the Popes, or the Interims of the Year 1548. or any other politick Statutes, or Ecclesiastical Decrees, Dispensations, Absolutions, or any other Exceptions, under what pretence or colour they can be invented; shall take place against this Convention, or any of its Clauses and Articles neither shall any inhibitory or other Processes or Commissions be ever allow'd to the Plaintiff or Defendant.

**CXXXII.**

That he who by his Assistance or Counsel shall contravene this Transaction or Publick Peace, or shall oppose its Execution and the abovesaid Restitution, or who shall have endeavour'd, after the Restitution has been lawfully made, and without exceeding the manner agreed on before, without a lawful Cognizance of the Cause, and without the ordinary Course of Justice, to molest those that have been restor'd, whether Ecclesiasticks or Laymen; he shall incur the Punishment of being an Infringer of the publick Peace, and Sentence given against him according to the Constitutions of the Empire, so that the Restitution and Reparation may have its full effect.

**CXXXIII.**

That nevertheless the concluded Peace shall remain in force, and all Partys in this Transaction shall be oblig'd to defend and protect all and every Article of this Peace against any one, without distinction of Religion; and if it happens any point shall be violated, the Offended shall before all things exhort the Offender not to come to any Hostility, submitting the Cause to a friendly Composition, or the ordinary Proceedings of Justice.



**CXXIV.**

Nevertheless, if for the space of three years the Difference cannot be terminated by any of those means, all and every one of those concern'd in this Transaction shall be oblig'd to join the injur'd Party, and assist him with Counsel and Force to repel the Injury, being first advertis'd by the injur'd that gentle Means and Justice prevail'd nothing; but without prejudice, nevertheless, to every one's Jurisdiction, and the Administration of Justice conformable to the Laws of each Prince and State: and it shall not be permitted to any State of the Empire to pursue his Right by Force and Arms; but if any difference has happen'd or happens for the future, every one shall try the means of ordinary Justice, and the Contravener shall be regarded as an Infringer of the Peace. That which has been determin'd by Sentence of the Judge, shall be put in execution, without distinction of Condition, as the Laws of the Empire enjoin touching the Execution of Arrests and Sentences.

**CXXV.**

And that the publick Peace may be so much the better preserv'd intire, the Circles shall be renew'd; and as soon as any Beginnings of Troubles are perceiv'd, that which has been concluded in the Constitutions, of the Empire, touching the Execution and Preservation of the Public Peace, shall be observ'd.

**CXXVI.**

And as often as any would march Troops thro' the other Territorys, this Passage shall be done at the charge of him whom the Troops belong to, and that without burdening or doing any harm or damage to those whole Countrys they march thro'. In a word, all that the Imperial Constitutions determine and ordain touching the Preservation of the publick Peace, shall be strictly observ'd.

**CXXVII.**

In this present Treaty of Peace are comprehended such, who before the Exchange of the Ratification or in six months after, shall be nominated by general Consent, by the one or the other Party; mean time by a common Agreement, the Republick of Venice is therein compriz'd as Mediatrix of this Treaty. It shall also be of no prejudice to the Dukes of Savoy and Modena, or to what they shall act, or are now acting in Italy by Arms for the most Christian King.

**CXXVIII.**

In Testimony of all and each of these things, and for their greater Validity, the Ambassadors of their Imperial and most Christian Majestys, and the Deputys, in the name of all the Electors, Princes, and States of the Empire, sent particularly for this end (by virtue of what has been concluded the 13<sup>th</sup> of October, in the Year hereafter mention'd,

and has been deliver'd to the Ambassador of France the very day of signing under the Seal of the Chancellor of Mentz) viz. For the Elector of Mayence, Monsieur Nicolas George de Reigersberg, Knight and Chancellor; for the Elector of Bavaria, Monsieur John Adolph Krebs, Privy Counsellor; for the Elector of Brandenburg, Monsieur John Count of Sain and Witgenstein, Lord of Homburg and Vallendar, Privy Counsellor.

In the Name of the House of Austria, M. George Verie, Count of Wolkenstein, Counsellor of the Emperor's Court; M. Corneille Gobelius, Counsellor of the Bishop of Bamberg; M. Sebastian William Meel, Privy Counsellor to the Bishop of Wirtzburg; M. John Earnest, Counsellor of the Duke of Bavaria's Court; M. Wolff Conrad of Thumbshirn, and Augustus Carpzovius, both Counsellors of the Court of Saxe-Altenburg and Coburg; M. John Fromhold, Privy Counsellor of the House of Brandenburg-Culmbac, and Onolzbac; M. Henry Laugenbeck, J.C. to the House of Brunswick-Lunenburg; James Limpodius, J.C. Counsellor of State to the Branch of Calemburg, and Vice-Chancellor of Lunenburg. In the Name of the Counts of the Bench of Wetteraw, M. Matthews Wesembecius, J. D. and Counsellor.

In the Name of the one and the other Bench, M. Marc Ottoh of Strasburg, M. John James Wolff of Ratisbon, M. David Gloxinius of Lubeck, and M. Lewis Christopher Kres of Kressenstein, all Syndick Senators, Counsellors and Advocates of the Republick of Noremberg; who with their proper Hands and Seals have sign'd and seal'd this present Treaty of Peace, and which said Deputys of the several Orders have engag'd to procure the Ratifications of their Superiors in the prefix'd time, and in the manner it has been covenanted, leaving the liberty to the other Plenipotentiarys of States to sign it, if they think it convenient, and send for the Ratifications of their Superiors: And that on condition that by the Subscription of the abovesaid Ambassadors and Deputys, all and every one of the other States who shall abstain from signing and ratifying the present Treaty, shall be no less oblig'd to maintain and observe what is contain'd in this present Treaty of Pacification, than if they had subscrib'd and ratify'd it; and no Protestation or Contradiction of the Council of Direction in the Roman Empire shall be valid, or receiv'd in respect to the Subscription and said Deputys have made.

DONE, pass'd and concluded at Münster in Westphalia, the 24<sup>th</sup> Day of October, 1648.

# Treaty between Russia and the United States, for the cession by Russia to the United States of all territory and dominion possessed by Russia, on the continent of America, and the Adjacent islands, signed at Washington, March 30 1867

The United States of America and His Majesty the Emperor of All the Russias being desirous of strengthening, if possible, the good understanding which exists between them, have, for that purpose appointed as their Plenipotentiaries:

The President of the United States, William H. Seward, Secretary of State;

And His Majesty the Emperor of All the Russias, the Privy Councillor Edward de Stoeckl, his Envoy Extraordinary and Minister Plenipotentiary to the United States.

And the said Plenipotentiaries having exchanged their full powers, which were found to be in due form, have agreed upon and signed the following Articles:

**Art. I.** His Majesty the Emperor of All the Russias agrees to cede to the United States by this Convention, immediately upon the exchange of the ratifications thereof, all the territory and dominion now possessed by His said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to with : the eastern limit is the line of demarcation between

the Russian and the British possessions in North America, as established by the Convention between Russia and Great Britain, of February, 28 (16) 1825 and described in Articles III and IV of said Conventions, in the following terms:

“Commencing from the southernmost point of the Island called Prince of Wales Island, which point lies in the parallel of 54° 40’ north latitude, and between the 131° and the 133° of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56° of north latitude; from this last mentioned point the line of demarcation shall follow the summit of the mountains situated parallel to the coast as far as the point of intersection of the 141° of west longitude (of the same meridian) ; and finally, from the said point of intersection, the said meridian line of the 141° in its prolongation as far as the Frozen Ocean.

”IV. With reference to the line of demarcation laid down in the preceding Article, it is understood :

“1st. That the island called Prince of Wales Island shall belong wholly to Russia (now, by this cession, to the United States).

”2nd. That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56° of north latitude to the point of intersection of the 141° of west longitude shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia as above mentioned (that is to say the limit to the possessions ceded by this Convention), shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of 10 marine leagues therefrom.“

The western limit within which the territories and dominion conveyed are contained passes through a point in Behring’s Straits on the parallel of 65° 30’ north latitude, at its intersection by the meridian which passes midway between the Islands of Krusenstern, or Ignalook, and the Island of Ratmanoff, or Noonarbook and proceeds due north, without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly south-west, through Behring’s Straits and Behring’s Sea, so as to pass midway between the north-west point of the Island of St. Lawrence and the south-east point of Cape Choukotski, to the meridian of 172° west longitude; thence, from the intersection of that meridian, in a south-westerly direction, so as to pass midway between the Island of Attou and the Copper Island of the Kormandorsi couplet or group in the North Pacific Ocean, to the meridian of 193° west longitude, so as to include in the territory conveyed the whole of the Aleutian Islands east of the meridian.

**II.** In the cession of territory and dominion made by the preceding Article are included the right of property in all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private individual property. It is, however, understood and agreed that the churches which have been

built in the ceded territory by the Russian Government shall remain the property of such members of the Greek Oriental Church resident in the territory as may choose to worship therein. Any Government archives, papers, and documents relative to the territory and dominion aforesaid, which may be now existing there, will be left in the possession of the Agent of The United States; but an authenticated copy of such of them as may be required will be, at all times, given by the United States to the Russian Government, or to such Russian officers or subjects as they may apply for.

**III.** The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within 3 years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of The United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country.

**IV.** His Majesty the Emperor of All the Russias shall appoint, with convenient despatch, an agent or agents for the purpose of formally delivering to a similar agent or agents appointed on behalf of the United States, the territory, dominion, property, dependencies, and appurtenances, which are ceded as above, and for doing any other act which may be necessary in regard thereto. But the cession, with the right of immediate possession, is nevertheless to be deemed complete and absolute on the exchange of ratifications without waiting for such formal delivery. **V.** Immediately after the exchange of the ratifications of this Convention, any fortifications or military posts which may be in the ceded territory shall be delivered to the agent of The United States, and any Russian troops which may be in the territory shall be withdrawn as soon as may be reasonably and conveniently practicable.

**VI.** In consideration of the cession aforesaid, The United States agree to pay at the treasury in Washington, within 10 months after the exchange of the ratification of this Convention, to the diplomatic representative or other agent of His Majesty the Emperor of All the Russias, duly authorized to receive the same 7,200,000 dollars in gold. The cession of territory and dominion herein made is hereby declared to be free and unincumbered by any reservations, privileges franchises, grants, or possessions, by any associated companies, whether corporate or incorporate, Russian or any other, or by any parties, except merely private individual property- holders; and the cession hereby made conveys all the rights, franchises, and privileges now belonging to Russia in the said territory or dominion and appurtenances thereto.

**VII.** When this Convention shall have been duly ratified by the President of The United States, by and with the advice and consent of the Senate, on the one part, and on the other by His Majesty the Emperor of All the Russias, the ratifications shall be exchanged at Washington within 3 months from the date hereof, or sooner, if possible. In faith whereof the respective Plenipotentiaries have signed this Convention, and thereto affixed the seals of their arms.

Done at Washington, the 30<sup>th</sup> day of March, in the year of our Lord 1867.

# Polish Constitution 1997<sup>1</sup>

Having regard for the existence and future of our Homeland,  
Which recovered, in 1989, the possibility of a sovereign and democratic determination of its fate,  
We, the Polish Nation - all citizens of the Republic,  
Both those who believe in God as the source of truth, justice, good and beauty,  
As well as those not sharing such faith but respecting those universal values as arising from other sources,  
Equal in rights and obligations towards the common good - Poland,  
Beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the Nation and in universal human values,  
Recalling the best traditions of the First and the Second Republic,  
Obliged to bequeath to future generations all that is valuable from our over one thousand years' heritage,  
Bound in community with our compatriots dispersed throughout the world,  
Aware of the need for cooperation with all countries for the good of the Human Family,  
Mindful of the bitter experiences of the times when fundamental freedoms and human rights were violated in our Homeland,  
Desiring to guarantee the rights of the citizens for all time, and to ensure diligence and efficiency in the work of public bodies,  
Recognizing our responsibility before God or our own consciences,  
Hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of subsidiarity in the strengthening the powers of citizens and their communities.  
We call upon all those who will apply this Constitution for the good of the Third Republic to do so paying respect to the inherent dignity of the person, his or her right to freedom, the obligation of solidarity with others, and respect for these principles as the unshakeable foundation of the Republic of Poland.

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<sup>1</sup>See: <http://www.sejm.gov.pl/prawo/konst/angielski/koni.htm>.

## Chapter I THE REPUBLIC

### Article 1

The Republic of Poland shall be the common good of all its citizens.

### Article 2

The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice.

### Article 3

The Republic of Poland shall be a unitary State.

### Article 4

1. Supreme power in the Republic of Poland shall be vested in the Nation.
2. The Nation shall exercise such power directly or through their representatives.

### Article 5

The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.

### Article 6

1. The Republic of Poland shall provide conditions for the people's equal access to the products of culture which are the source of the Nation's identity, continuity and development.
2. The Republic of Poland shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage.

### Article 7

The organs of public authority shall function on the basis of, and within the limits of, the law.

**Article 8**

1. The Constitution shall be the supreme law of the Republic of Poland.
2. The provisions of the Constitution shall apply directly, unless the Constitution provides otherwise.

**Article 9**

The Republic of Poland shall respect international law binding upon it.

**Article 10**

1. The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers.
2. Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals.

**Article 11**

1. The Republic of Poland shall ensure freedom for the creation and functioning of political parties. Political parties shall be founded on the principle of voluntariness and upon the equality of Polish citizens, and their purpose shall be to influence the formulation of the policy of the State by democratic means.
2. The financing of political parties shall be open to public inspection.

**Article 12**

The Republic of Poland shall ensure freedom for the creation and functioning of trade unions, socio-occupational organizations of farmers, societies, citizens' movements, other voluntary associations and foundations.

**Article 13**

Political parties and other organizations whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership, shall be prohibited.

**Article 14**

The Republic of Poland shall ensure freedom of the press and other means of social communication.



**Article 15**

1. The territorial system of the Republic of Poland shall ensure the decentralization of public power.
2. The basic territorial division of the State shall be determined by statute, allowing for the social, economic and cultural ties which ensure to the territorial units the capacity to perform their public duties.

**Article 16**

1. The inhabitants of the units of basic territorial division shall form a self-governing community in accordance with law.
2. Local government shall participate in the exercise of public power. The substantial part of public duties which local government is empowered to discharge by statute shall be done in its own name and under its own responsibility.

**Article 17**

1. By means of a statute, self-governments may be created within a profession in which the public repose confidence, and such self-governments shall concern themselves with the proper practice of such professions in accordance with, and for the purpose of protecting, the public interest.
2. Other forms of self-government shall also be created by means of statute. Such self-governments shall not infringe the freedom to practice a profession nor limit the freedom to undertake economic activity.

**Article 18**

Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.

**Article 19**

The Republic of Poland shall take special care of veterans of the struggle for independence, particularly war invalids.

**Article 20**

A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland.

**Article 21**

1. The Republic of Poland shall protect ownership and the right of succession.
2. Expropriation may be allowed solely for public purposes and for just compensation.

**Article 22**

Limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons.

**Article 23**

The basis of the agricultural system of the State shall be the family farm. This principle shall not infringe the provisions of Articles 21 and 22.

**Article 24**

Work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work.

**Article 25**

1. Churches and other religious organizations shall have equal rights.
2. Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life.
3. The relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good.
4. The relations between the Republic of Poland and the Roman Catholic Church shall be determined by international treaty concluded with the Holy See, and by statute.
5. The relations between the Republic of Poland and other churches and religious organizations shall be determined by statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers.

**Article 26**

1. The Armed Forces of the Republic of Poland shall safeguard the independence and territorial integrity of the State, and shall ensure the security and inviolability of its borders.
2. The Armed Forces shall observe neutrality regarding political matters and shall be subject to civil and democratic control.

**Article 27**

Polish shall be the official language in the Republic of Poland. This provision shall not infringe upon national minority rights resulting from ratified international agreements.

**Article 28**

1. The image of a crowned white eagle upon a red field shall be the coat-of-arms of the Republic of Poland.
2. White and red shall be the colours of the Republic of Poland.
3. "Dąbrowski's Mazurka" shall be the national anthem of the Republic of Poland.
4. The coat-of-arms, colours and national anthem of the Republic of Poland shall be subject to legal protection.
5. Details concerning the coat-of-arms, colours and national anthem shall be specified by statute.

**Article 29**

Warsaw shall be the capital of the Republic of Poland.

## **Chapter II** **THE FREEDOMS, RIGHTS AND OBLIGATIONS OF** **PERSONS AND CITIZENS**

### **GENERAL PRINCIPLES**

**Article 30**

The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.

**Article 31**

1. Freedom of the person shall receive legal protection.
2. Everyone shall respect the freedoms and rights of others. No one shall be compelled to do that which is not required by law.
3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

**Article 32**

1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

**Article 33**

1. Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland.
2. Men and women shall have equal rights, in particular, regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honours and decorations.

**Article 34**

1. Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland.
2. Polish citizenship shall be acquired by birth to parents being Polish citizens. Other methods of acquiring Polish citizenship shall be specified by statute.
3. A Polish citizen shall not lose Polish citizenship except by renunciation thereof.

**Article 35**

1. The Republic of Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture.

2. National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.

#### **Article 36**

A Polish citizen shall, during a stay abroad, have the right to protection by the Polish State.

#### **Article 37**

1. Anyone, being under the authority of the Polish State, shall enjoy the freedoms and rights ensured by the Constitution.
2. Exemptions from this principle with respect to foreigners shall be specified by statute.

### **PERSONAL FREEDOMS AND RIGHTS**

#### **Article 38**

The Republic of Poland shall ensure the legal protection of the life of every human being.

#### **Article 39**

No one shall be subjected to scientific experimentation, including medical experimentation, without his voluntary consent.

#### **Article 40**

No one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment. The application of corporal punishment shall be prohibited.

#### **Article 41**

1. Personal inviolability and security shall be ensured to everyone. Any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute.
2. Anyone deprived of liberty, except by sentence of a court, shall have the right to appeal to a court for immediate decision upon the lawfulness of such deprivation. Any deprivation of liberty shall be immediately made known to the family of, or a person indicated by, the person deprived of liberty.

3. Every detained person shall be informed, immediately and in a manner comprehensible to him, of the reasons for such detention. The person shall, within 48 hours of detention, be given over to a court for consideration of the case. The detained person shall be set free unless a warrant of temporary arrest issued by a court, along with specification of the charges laid, has been served on him within 24 hours of the time of being given over to the court's disposal.
4. Anyone deprived of liberty shall be treated in a humane manner.
5. Anyone who has been unlawfully deprived of liberty shall have a right to compensation.

#### **Article 42**

1. Only a person who has committed an act prohibited by a statute in force at the moment of commission thereof, and which is subject to a penalty, shall be held criminally responsible. This principle shall not prevent punishment of any act which, at the moment of its commission, constituted an offence within the meaning of international law.
2. Anyone against whom criminal proceedings have been brought shall have the right to defence at all stages of such proceedings. He may, in particular, choose counsel or avail himself - in accordance with principles specified by statute - of counsel appointed by the court.
3. Everyone shall be presumed innocent of a charge until his guilt is determined by the final judgment of a court.

#### **Article 43**

There shall be no statute of limitation regarding war crimes and crimes against humanity.

#### **Article 44**

The statute of limitation regarding actions connected with offences committed by, or by order of, public officials and which have not been prosecuted for political reasons, shall be extended for the period during which such reasons existed.

#### **Article 45**

1. Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.
2. Exceptions to the public nature of hearings may be made for reasons of morality, State security, public order or protection of the private life of a party, or other important private interest. Judgments shall be announced publicly.

**Article 46**

Property may be forfeited only in cases specified by statute, and only by virtue of a final judgment of a court.

**Article 47**

Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life.

**Article 48**

1. Parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions.
2. Limitation or deprivation of parental rights may be effected only in the instances specified by statute and only on the basis of a final court judgment.

**Article 49**

The freedom and privacy of communication shall be ensured. Any limitations thereon may be imposed only in cases and in a manner specified by statute.

**Article 50**

The inviolability of the home shall be ensured. Any search of a home, premises or vehicles may be made only in cases and in a manner specified by statute.

**Article 51**

1. No one may be obliged, except on the basis of statute, to disclose information concerning his person.
2. Public authorities shall not acquire, collect nor make accessible information on citizens other than that which is necessary in a democratic state ruled by law.
3. Everyone shall have a right of access to official documents and data collections concerning himself. Limitations upon such rights may be established by statute.
4. Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute.
5. Principles and procedures for collection of and access to information shall be specified by statute.

**Article 52**

1. Freedom of movement as well as the choice of place of residence and sojourn within the territory of the Republic of Poland shall be ensured to everyone.
2. Everyone may freely leave the territory of the Republic of Poland.
3. The freedoms specified in paras. 1 and 2 above may be subject to limitations specified by statute.
4. A Polish citizen may not be expelled from the country nor forbidden to return to it.
5. Anyone whose Polish origin has been confirmed in accordance with statute may settle permanently in Poland.

**Article 53**

1. Freedom of conscience and religion shall be ensured to everyone.
2. Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services.
3. Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The provisions of Article 48, para. 1 shall apply as appropriate.
4. The religion of a church or other legally recognized religious organization may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed thereby.
5. The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others.
6. No one shall be compelled to participate or not participate in religious practices.
7. No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief.



**Article 54**

1. The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone.
2. Preventive censorship of the means of social communication and the licensing of the press shall be prohibited. Statutes may require the receipt of a permit for the operation of a radio or television station.

**Article 55**

1. The extradition of a Polish citizen shall be prohibited, except in cases specified in paras 2 and 3.
2. Extradition of a Polish citizen may be granted upon a request made by a foreign state or an international judicial body if such a possibility stems from an international treaty ratified by Poland or a statute implementing a legal instrument enacted by an international organisation of which the Republic of Poland is a member, provided that the act covered by a request for extradition:
  - 1) was committed outside the territory of the Republic of Poland, and
  - 2) constituted an offence under the law in force in the Republic of Poland or would have constituted an offence under the law in force in the Republic of Poland if it had been committed within the territory of the Republic of Poland, both at the time of its commitment and at the time of the making of the request.
3. Compliance with the conditions specified in para. 2 subparas 1 and 2 shall not be required if an extradition request is made by an international judicial body established under an international treaty ratified by Poland, in connection with a crime of genocide, crime against humanity, war crime or a crime of aggression, covered by the jurisdiction of that body.
4. The extradition of a person suspected of the commission of a crime for political reasons but without the use of force shall be forbidden, so as an extradition which would violate rights and freedoms of persons and citizens.
5. The courts shall adjudicate on the admissibility of extradition.

**Article 56**

1. Foreigners shall have a right of asylum in the Republic of Poland in accordance with principles specified by statute.
2. Foreigners who, in the Republic of Poland, seek protection from persecution, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party.

## POLITICAL FREEDOMS AND RIGHTS

### Article 57

The freedom of peaceful assembly and participation in such assemblies shall be ensured to everyone. Limitations upon such freedoms may be imposed by statute.

### Article 58

1. The freedom of association shall be guaranteed to everyone.
2. Associations whose purposes or activities are contrary to the Constitution or statutes shall be prohibited. The courts shall adjudicate whether to permit an association to register or to prohibit an association from such activities.
3. Statutes shall specify types of associations requiring court registration, a procedure for such registration and the forms of supervision of such associations.

### Article 59

1. The freedom of association in trade unions, socio-occupational organizations of farmers, and in employers' organizations shall be ensured.
2. Trade unions and employers and their organizations shall have the right to bargain, particularly for the purpose of resolving collective disputes, and to conclude collective labour agreements and other arrangements.
3. Trade unions shall have the right to organize workers' strikes or other forms of protest subject to limitations specified by statute. For protection of the public interest, statutes may limit or forbid the conduct of strikes by specified categories of employees or in specific fields.
4. The scope of freedom of association in trade unions and in employers' organizations may only be subject to such statutory limitations as are permissible in accordance with international agreements to which the Republic of Poland is a party.

### Article 60

Polish citizens enjoying full public rights shall have a right of access to the public service based on the principle of equality.

### Article 61

1. A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the

field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury.

2. The right to obtain information shall ensure access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings.
3. Limitations upon the rights referred to in paras. 1 and 2 above, may be imposed by statute solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State.
4. The procedure for the provision of information, referred to in paras. 1 and 2 above shall be specified by statute, and regarding the Sejm and the Senate by their rules of procedure.

#### **Article 62**

1. If, no later than on the day of vote, he has attained 18 years of age, Polish citizen shall have the right to participate in a referendum and the right to vote for the President of the Republic of Poland as well as representatives to the Sejm and Senate and organs of local government.
2. Persons who, by a final judgment of a court, have been subjected to legal incapacitation or deprived of public or electoral rights, shall have no right to participate in a referendum nor a right to vote.

#### **Article 63**

Everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person - with his consent - to organs of public authority, as well as to organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration. The procedures for considering petitions, proposals and complaints shall be specified by statute.

### **ECONOMIC, SOCIAL AND CULTURAL FREEDOMS AND RIGHTS**

#### **Article 64**

1. Everyone shall have the right to ownership, other property rights and the right of succession.
2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.
3. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.

**Article 65**

1. Everyone shall have the freedom to choose and to pursue his occupation and to choose his place of work. Exceptions shall be specified by statute.
2. An obligation to work may be imposed only by statute.
3. The permanent employment of children under 16 years of age shall be prohibited. The types and nature of admissible employment shall be specified by statute.
4. A minimum level of remuneration for work, or the manner of setting its levels shall be specified by statute.
5. Public authorities shall pursue policies aiming at full, productive employment by implementing programmes to combat unemployment, including the organization of and support for occupational advice and training, as well as public works and economic intervention.

**Article 66**

1. Everyone shall have the right to safe and hygienic conditions of work. The methods of implementing this right and the obligations of employers shall be specified by statute.
2. An employee shall have the right to statutorily specified days free from work as well as annual paid holidays; the maximum permissible hours of work shall be specified by statute.

**Article 67**

1. A citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age. The scope and forms of social security shall be specified by statute.
2. A citizen who is involuntarily without work and has no other means of support, shall have the right to social security, the scope of which shall be specified by statute.

**Article 68**

1. Everyone shall have the right to have his health protected.
2. Equal access to health care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective of their material situation. The conditions for, and scope of, the provision of services shall be established by statute.
3. Public authorities shall ensure special health care to children, pregnant women, handicapped people and persons of advanced age.

4. Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment.
5. Public authorities shall support the development of physical culture, particularly amongst children and young persons.

### **Article 69**

Public authorities shall provide, in accordance with statute, aid to disabled persons to ensure their subsistence, adaptation to work and social communication.

### **Article 70**

1. Everyone shall have the right to education. Education to 18 years of age shall be compulsory. The manner of fulfilment of schooling obligations shall be specified by statute.
2. Education in public schools shall be without payment. Statutes may allow for payments for certain services provided by public institutions of higher education.
3. Parents shall have the right to choose schools other than public for their children. Citizens and institutions shall have the right to establish primary and secondary schools and institutions of higher education and educational development institutions. The conditions for establishing and operating non-public schools, the participation of public authorities in their financing, as well as the principles of educational supervision of such schools and educational development institutions, shall be specified by statute.
4. Public authorities shall ensure universal and equal access to education for citizens. To this end, they shall establish and support systems for individual financial and organizational assistance to pupils and students. The conditions for providing of such assistance shall be specified by statute.
5. The autonomy of the institutions of higher education shall be ensured in accordance with principles specified by statute.

### **Article 71**

1. The State, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances - particularly those with many children or a single parent - shall have the right to special assistance from public authorities.
2. A mother, before and after birth, shall have the right to special assistance from public authorities, to the extent specified by statute.

**Article 72**

1. The Republic of Poland shall ensure protection of the rights of the child. Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense.
2. A child deprived of parental care shall have the right to care and assistance provided by public authorities.
3. Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child.
4. The competence and procedure for appointment of the Commissioner for Children's Rights shall be specified by statute.

**Article 73**

The freedom of artistic creation and scientific research as well as dissemination of the fruits thereof, the freedom to teach and to enjoy the products of culture, shall be ensured to everyone.

**Article 74**

1. Public authorities shall pursue policies ensuring the ecological security of current and future generations.
2. Protection of the environment shall be the duty of public authorities.
3. Everyone shall have the right to be informed of the quality of the environment and its protection.
4. Public authorities shall support the activities of citizens to protect and improve the quality of the environment.

**Article 75**

1. Public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen.
2. Protection of the rights of tenants shall be established by statute.

**Article 76**

Public authorities shall protect consumers, customers, hirers or lessees against activities threatening their health, privacy and safety, as well as against dishonest market practices. The scope of such protection shall be specified by statute.

**MEANS FOR THE DEFENCE OF FREEDOMS AND RIGHTS****Article 77**

1. Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law.
2. Statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights.

**Article 78**

Each party shall have the right to appeal against judgments and decisions made at first stage. Exceptions to this principle and the procedure for such appeals shall be specified by statute.

**Article 79**

1. In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution.
2. The provisions of para. 1 above shall not relate to the rights specified in Article 56.

**Article 80**

In accordance with principles specified by statute, everyone shall have the right to apply to the Commissioner for Citizens' Rights for assistance in protection of his freedoms or rights infringed by organs of public authority.

**Article 81**

The rights specified in Article 65, paras. 4 and 5, Article 66, Article 69, Article 71 and Articles 74-76, may be asserted subject to limitations specified by statute.

## OBLIGATIONS

### Article 82

Loyalty to the Republic of Poland, as well as concern for the common good, shall be the duty of every Polish citizen.

### Article 83

Everyone shall observe the law of the Republic of Poland.

### Article 84

Everyone shall comply with his responsibilities and public duties, including the payment of taxes, as specified by statute.

### Article 85

1. It shall be the duty of every Polish citizen to defend the Homeland.
2. The nature of military service shall be specified by statute.
3. Any citizen whose religious convictions or moral principles do not allow him to perform military service may be obliged to perform substitute service in accordance with principles specified by statute.

### Article 86

Everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute.

## Chapter III SOURCES OF LAW

### Article 87

1. The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations.
2. Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments.



**Article 88**

1. The condition precedent for the coming into force of statutes, regulations and enactments of local law shall be the promulgation thereof.
2. The principles of and procedures for promulgation of normative acts shall be specified by statute.
3. International agreements ratified with prior consent granted by statute shall be promulgated in accordance with the procedures required for statutes. The principles of promulgation of other international agreements shall be specified by statute.

**Article 89**

1. Ratification of an international agreement by the Republic of Poland, as well as renunciation thereof, shall require prior consent granted by statute - if such agreement concerns:
  - 1) peace, alliances, political or military treaties;
  - 2) freedoms, rights or obligations of citizens, as specified in the Constitution;
  - 3) the Republic of Poland's membership in an international organization;
  - 4) considerable financial responsibilities imposed on the State;
  - 5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute.
2. The President of the Council of Ministers (the Prime Minister) shall inform the Sejm of any intention to submit, for ratification by the President of the Republic, any international agreements whose ratification does not require consent granted by statute.
3. The principles of and procedures for the conclusion and renunciation of international agreements shall be specified by statute.

**Article 90**

1. The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.
2. A statute, granting consent for ratification of an international agreement referred to in para.1, shall be passed by the Sejm by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators.

3. Granting of consent for ratification of such agreement may also be passed by a nationwide referendum in accordance with the provisions of Article 125.
4. Any resolution in respect of the choice of procedure for granting consent to ratification shall be taken by the Sejm by an absolute majority vote taken in the presence of at least half of the statutory number of Deputies.

### **Article 91**

1. After promulgation thereof in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*), a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute.
2. An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.
3. If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws.

### **Article 92**

1. Regulations shall be issued on the basis of specific authorization contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorization shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.
2. An organ authorized to issue a regulation shall not delegate its competence, referred to in para. 1 above, to another organ.

### **Article 93**

1. Resolutions of the Council of Ministers and orders of the Prime Minister and ministers shall be of an internal character and shall bind only those organizational units subordinate to the organ which issues such act.
2. Orders shall only be issued on the basis of statute. They shall not serve as the basis for decisions taken in respect of citizens, legal persons and other subjects.
3. Resolutions and orders shall be subject to scrutiny regarding their compliance with universally binding law.

**Article 94**

On the basis of and within limits specified by statute, organs of local government and territorial organs of government administration shall enact local legal enactments applicable to their territorially defined areas of operation. The principles of and procedures for enacting local legal enactments shall be specified by statute.

## **Chapter IV THE SEJM AND THE SENATE**

**Article 95**

1. Legislative power in the Republic of Poland shall be exercised by the Sejm and the Senate.
2. The Sejm shall exercise control over the activities of the Council of Ministers within the scope specified by the provisions of the Constitution and statutes.

### **ELECTIONS AND THE TERM OF OFFICE**

**Article 96**

1. The Sejm shall be composed of 460 Deputies.
2. Elections to the Sejm shall be universal, equal, direct and proportional and shall be conducted by secret ballot.

**Article 97**

1. The Senate shall be composed of 100 Senators.
2. Elections to the Senate shall be universal, direct and shall be conducted by secret ballot.

**Article 98**

1. The Sejm and the Senate shall be chosen each for a 4-year term of office. The term of office of the Sejm and Senate shall begin on the day on which the Sejm assembles for its first sitting and shall continue until the day preceding the assembly of the Sejm of the succeeding term of office.
2. Elections to the Sejm and the Senate shall be ordered by the President of the Republic no later than 90 days before the expiry of the 4 year period beginning with the commencement of the Sejm's and Senate's term of office, and he shall order such elections to be held on a non-working day which shall be within the 30 day period before the expiry of the 4 year period beginning from the commencement of the Sejm's and Senate's term of office.

3. The Sejm may shorten its term of office by a resolution passed by a majority of at least two-thirds of the votes of the statutory number of Deputies. Any shortening of the term of office of the Sejm shall simultaneously mean a shortening of the term of office of the Senate. The provisions of para. 5 above shall apply as appropriate.
4. The President of the Republic, after seeking the opinion of the Marshal of the Sejm and the Marshal of the Senate, may, in those instances specified in the Constitution, order shortening of the Sejm's term of office. Whenever the term of office of the Sejm has been so shortened, then the term of office of the Senate shall also be shortened.
5. The President of the Republic, when ordering the shortening of the Sejm's term of office, shall simultaneously order elections to the Sejm and the Senate, and shall order them to be held on a day falling no later than within the 45 day period from the day of the official announcement of Presidential order on the shortening of the Sejm's term of office. The President of the Republic shall summon the first sitting of the newly elected Sejm no later than the 15th day after the day on which the elections were held.
6. In the event of shortening of the Sejm's term of office, the provisions of para. 1 above shall apply as appropriate.

### **Article 99**

1. Every citizen having the right to vote, who, no later than on the day of the elections, has attained the age of 21 years, shall be eligible to be elected to the Sejm.
2. Every citizen having the right to vote, who, no later than on the day of the elections, has attained the age of 30 years, shall be eligible to be elected to the Senate.
3. No person sentenced to imprisonment by a final judgment for an intentional indictable offence may be elected to the Sejm or the Senate.

### **Article 100**

1. Candidates for Deputies and Senators may be nominated by political parties or voters.
2. No one may stand for election to the Sejm and the Senate at the same time.
3. The principles of and procedures for the nomination of candidates and the conduct of the elections, as well as the requirements for validity of the elections, shall be specified by statute.

**Article 101**

1. The Supreme Court shall adjudicate upon the validity of the elections to the Sejm and the Senate.
2. A voter shall have the right to submit a complaint to the Supreme Court against the validity of the elections in accordance with principles specified by statute.

**DEPUTIES AND SENATORS****Article 102**

No one may be a Deputy and Senator at the same time.

**Article 103**

1. The mandate of a Deputy shall not be held jointly with the office of the President of the National Bank of Poland, the President of the Supreme Chamber of Control, the Commissioner for Citizens' Rights, the Commissioner for Children's Rights or their deputies, a member of the Council for Monetary Policy, a member of the National Council of Radio Broadcasting and Television, ambassador, or with employment in the Chancellery of the Sejm, Chancellery of the Senate, Chancellery of the President of the Republic, or with employment in government administration. This prohibition shall not apply to members of the Council of Ministers and secretaries of state in government administration.
2. No judge, public prosecutor, officer of the civil service, soldier on active military service or functionary of the police or of the services of State protection shall exercise the mandate of a Deputy.
3. Other instances prohibiting the holding of a mandate of a Deputy or prohibiting the performance of a mandate jointly with other public functions may be specified by statute.

**Article 104**

1. Deputies shall be representatives of the Nation. They shall not be bound by any instructions of the electorate.
2. Deputies, before the commencement of the performance of the mandate, shall take the following oath in the presence of the Sejm: "I do solemnly swear to perform my duties to the Nation diligently and conscientiously, to safeguard the sovereignty and interests of the State, to do all within my power for the prosperity of the Homeland and the well-being of its citizens, and to observe the Constitution and other laws of the Republic of Poland." The oath may also be taken with the additional sentence "So help me, God."
3. A refusal to take the oath shall be deemed to be a renunciation of the mandate.

**Article 105**

1. A Deputy shall not be held accountable for his activity performed within the scope of a Deputy's mandate during the term thereof nor after its completion. Regarding such activities, a Deputy can only be held accountable before the Sejm and, in a case where he has infringed the rights of third parties, he may only be proceeded against before a court with the consent of the Sejm.
2. From the day of announcement of the results of the elections until the day of the expiry of his mandate, a Deputy shall not be subjected to criminal accountability without the consent of the Sejm.
3. Criminal proceedings instituted against a person before the day of his election as Deputy, shall be suspended at the request of the Sejm until the time of expiry of the mandate. In such instance, the statute of limitation with respect to criminal proceedings shall be extended for the equivalent time.
4. A Deputy may consent to be brought to criminal accountability. In such instance, the provisions of paras. 2 and 3 shall not apply.
5. A Deputy shall be neither detained nor arrested without the consent of the Sejm, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. Any such detention shall be immediately communicated to the Marshal of the Sejm, who may order an immediate release of the Deputy.
6. Detailed principles of and procedures for bringing Deputies to criminal accountability shall be specified by statute.

**Article 106**

Conditions appropriate to the effective discharge of their duties by the Deputies as well as for defence of their rights resulting from the performance of their mandate shall be specified by statute.

**Article 107**

1. Deputies shall not be permitted, to the extent specified by statute, to perform any business activity involving any benefit derived from the property of the State Treasury or local government or to acquire such property.
2. In respect of any breach of the prohibition specified in para. 1 above, a Deputy shall, by resolution of the Sejm adopted on a motion of the Marshal of the Sejm, be brought to accountability before the Tribunal of State which shall adjudicate upon forfeiture of the mandate.

**Article 108**

The provisions of Articles 103-107 shall apply, as appropriate, to Senators.

**ORGANIZATION AND FUNCTIONING****Article 109**

1. The Sejm and the Senate shall debate in the course of sittings.
2. The first sitting of the Sejm and Senate shall be summoned by the President of the Republic to be held on a day within 30 days following the day of the elections, except for instances specified in Article 98, paras. 3 and 5.

**Article 110**

1. The Sejm shall elect from amongst its members a Marshal of the Sejm and Vice-Marshals.
2. The Marshal of the Sejm shall preside over the debates of the Sejm, safeguard the rights of the Sejm as well as represent the Sejm in external matters.
3. The Sejm shall appoint standing committees and may also appoint special committees.

**Article 111**

1. The Sejm may appoint an investigative committee to examine a particular matter.
2. The procedures for work by an investigative committee shall be specified by statute.

**Article 112**

The internal organization and conduct of work of the Sejm and the procedure for appointment and operation of its organs as well as the manner of performance of obligations, both constitutional and statutory, by State organs in relation to the Sejm, shall be specified in the rules of procedure adopted by the Sejm.

**Article 113**

Sittings of the Sejm shall be open to the public. In the interest of the State, the Sejm may resolve, by an absolute majority vote taken in the presence of at least half of the statutory number of Deputies, to hold a debate in secret.

**Article 114**

1. In instances specified in the Constitution, the Sejm and the Senate sitting in joint session, shall act as the National Assembly, with the Marshal of the Sejm presiding or, in his absence, the Marshal of the Senate.
2. The National Assembly shall adopt its own rules of procedure.

**Article 115**

1. The Prime Minister and other members of the Council of Ministers shall furnish answers to interpellations and Deputies' questions within 21 days.
2. The Prime Minister and other members of the Council of Ministers shall furnish answers to matters raised in the course of each sitting of the Sejm.

**Article 116**

1. The Sejm shall declare, in the name of the Republic of Poland, a state of war and the conclusion of peace.
2. The Sejm may adopt a resolution on a state of war only in the event of armed aggression against the territory of the Republic of Poland or when an obligation of common defence against aggression arises by virtue of international agreements. If the Sejm cannot assemble for a sitting, the President of the Republic may declare a state of war.

**Article 117**

The principles for deployment of the Armed Forces beyond the borders of the Republic of Poland shall be specified by a ratified international agreement or by statute. The principles for the presence of foreign troops on the territory of the Republic of Poland and the principles for their movement within that territory shall be specified by ratified agreements or statutes.

**Article 118**

1. The right to introduce legislation shall belong to Deputies, to the Senate, to the President of the Republic and to the Council of Ministers.
2. The right to introduce legislation shall also belong to a group of at least 100,000 citizens having the right to vote in elections to the Sejm. The procedure in such matter shall be specified by statute.
3. Sponsors, when introducing a bill to the Sejm, shall indicate the financial consequences of its implementation.



**Article 119**

1. The Sejm shall consider bills in the course of three readings.
2. The right to introduce amendments to a bill in the course of its consideration by the Sejm shall belong to its sponsor, Deputies and the Council of Ministers.
3. The Marshal of the Sejm may refuse to put to a vote any amendment which has not previously been submitted to a committee.
4. The sponsor may withdraw a bill in the course of legislative proceedings in the Sejm until the conclusion of its second reading.

**Article 120**

The Sejm shall pass bills by a simple majority vote, in the presence of at least half of the statutory number of Deputies, unless the Constitution provides for another majority. The same procedure shall be applied by the Sejm in adoption of resolutions, unless a statute or a resolution of the Sejm provide otherwise.

**Article 121**

1. A bill passed by the Sejm shall be submitted to the Senate by the Marshal of the Sejm.
2. The Senate, within 30 days of submission of a bill, may adopt it without amendment, adopt amendments or resolve upon its complete rejection. If, within 30 days following the submission of the bill, the Senate fails to adopt an appropriate resolution, the bill shall be considered adopted according to the wording submitted by the Sejm.
3. A resolution of the Senate rejecting a bill, or an amendment proposed in the Senate's resolution, shall be considered accepted unless the Sejm rejects it by an absolute majority vote in the presence of at least half of the statutory number of Deputies.

**Article 122**

1. After the completion of the procedure specified in Article 121, the Marshal of the Sejm shall submit an adopted bill to the President of the Republic for signature.
2. The President of the Republic shall sign a bill within 21 days of its submission and shall order its promulgation in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*).
3. The President of the Republic may, before signing a bill, refer it to the Constitutional Tribunal for an adjudication upon its conformity to the Constitution. The

President of the Republic shall not refuse to sign a bill which has been judged by the Constitutional Tribunal as conforming to the Constitution.

4. The President of the Republic shall refuse to sign a bill which the Constitutional Tribunal has judged not to be in conformity to the Constitution. If, however, the non-conformity to the Constitution relates to particular provisions of the bill, and the Tribunal has not judged that they are inseparably connected with the whole bill, then, the President of the Republic, after seeking the opinion of the Marshal of the Sejm, shall sign the bill with the omission of those provisions considered as being in non-conformity to the Constitution or shall return the bill to the Sejm for the purpose of removing the non-conformity.
5. If the President of the Republic has not made reference to the Constitutional Tribunal in accordance with para. 3, he may refer the bill, with reasons given, to the Sejm for its reconsideration. If the said bill is repassed by the Sejm by a three-fifths majority vote in the presence of at least half of the statutory number of Deputies, then, the President of the Republic shall sign it within 7 days and shall order its promulgation in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*). If the said bill has been repassed by the Sejm, the President of the Republic shall have no right to refer it to the Constitutional Tribunal in accordance with the procedure prescribed in para. 3.
6. Any such reference by the President of the Republic to the Constitutional Tribunal for an adjudication upon the conformity of a statute to the Constitution, or any application for reconsideration of a bill, shall suspend the period of time allowed for its signature, specified in para. 2, above.

### **Article 123**

1. The Council of Ministers may classify a bill adopted by itself as urgent, with the exception of tax bills, bills governing elections to the Presidency of the Republic of Poland, to the Sejm, to the Senate and to organs of local government, bills governing the structure and jurisdiction of public authorities, and also drafts of law codes.
2. The rules of procedure of the Sejm and the rules of procedure of the Senate shall define the modifications in the legislative procedure when a bill has been classified as urgent.
3. In the legislative procedure in relation to a bill classified as urgent, the time period for its consideration by the Senate shall be 14 days and the period for its signature by the President of the Republic shall be 7 days.

**Article 124**

The provisions of Article 110, Article 112, Article 113 and Article 120 shall apply, as appropriate, to the Senate.

**REFERENDUM****Article 125**

1. A nationwide referendum may be held in respect of matters of particular importance to the State.
2. The right to order a nationwide referendum shall be vested in the Sejm, to be taken by an absolute majority of votes in the presence of at least half of the statutory number of Deputies, or in the President of the Republic with the consent of the Senate given by an absolute majority vote taken in the presence of at least half of the statutory number of Senators.
3. A result of a nationwide referendum shall be binding, if more than half of the number of those having the right to vote have participated in it.
4. The validity of a nationwide referendum and the referendum referred to in Article 235, para. 6, shall be determined by the Supreme Court.
5. The principles of and procedures for the holding of a referendum shall be specified by statute.

**Chapter V**  
**THE PRESIDENT OF THE REPUBLIC OF POLAND****Article 126**

1. The President of the Republic of Poland shall be the supreme representative of the Republic of Poland and the guarantor of the continuity of State authority.
2. The President of the Republic shall ensure observance of the Constitution, safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory.
3. The President shall exercise his duties within the scope of and in accordance with the principles specified in the Constitution and statutes.

**Article 127**

1. The President of the Republic shall be elected by the Nation, in universal, equal and direct elections, conducted by secret ballot.

2. The President of the Republic shall be elected for a 5-year term of office and may be re-elected only for one more term.
3. Only a Polish citizen who, no later than the day of the elections, has attained 35 years of age and has a full electoral franchise in elections to the Sejm, may be elected President of the Republic. Any such candidature shall be supported by the signatures of at least 100,000 citizens having the right to vote in elections to the Sejm.
4. A candidate who has received more than half of the valid votes shall be considered elected President of the Republic. If none of the candidates has received the required majority of votes, then a repeat ballot shall be held on the 14th day after the first vote.
5. The two candidates who have received the largest number of votes in the first ballot shall participate in a repeat ballot. If one of the two such candidates withdraws his consent to candidacy, forfeits his electoral rights or dies, he shall be replaced in the repeat ballot by the candidate who received the next highest consecutive number of votes in the first ballot. In such case, the date of the repeat ballot shall be extended by a further 14 days.
6. The candidate who receives the higher number of votes in the repeat ballot shall be elected President of the Republic.
7. The principles of and procedure for nominating candidates and conducting the elections, as well as the requirements for validity of the election of the President of the Republic, shall be specified by statute.

#### **Article 128**

1. The term of office of the President of the Republic shall commence on the date of his assuming such office.
2. The election of the President of the Republic shall be ordered by the Marshal of the Sejm to be held on a day no sooner than 100 days and no later than 75 days before expiry of the term of office of the serving President of the Republic, and in the event of the office of President of the Republic falling vacant - no later than the 14th day thereafter, specifying the date of the election which shall be on a non-working day and within a period of 60 days of the day of ordering the election.

#### **Article 129**

1. The Supreme Court shall adjudicate upon the validity of the election of the President of the Republic.

2. A voter shall have the right to submit a complaint to the Supreme Court concerning the validity of the election of the President of the Republic in accordance with principles specified by statute.
3. In the event of the election of the President of the Republic being judged invalid, a new election shall be held in accordance with the principles prescribed in Article 128, para. 2 in relation to a vacancy in the office of President of the Republic.

### **Article 130**

The President of the Republic shall assume office upon taking the following oath in the presence of the National Assembly:

“Assuming, by the will of the Nation, the office of President of the Republic of Poland, I do solemnly swear to be faithful to the provisions of the Constitution; I pledge that I shall steadfastly safeguard the dignity of the Nation, the independence and security of the State, and also that the good of the Homeland and the prosperity of its citizens shall forever remain my supreme obligation.”

The oath may also be taken with the additional sentence “So help me, God.”

### **Article 131**

1. If the President of the Republic is temporarily unable to discharge the duties of his office, he shall communicate this fact to the Marshal of the Sejm, who shall temporarily assume the duties of the President of the Republic. If the President of the Republic is not in a position to inform the Marshal of the Sejm of his incapacity to discharge the duties of the office, then the Constitutional Tribunal shall, on request of the Marshal of the Sejm, determine whether or not there exists an impediment to the exercise of the office by the President of the Republic. If the Constitutional Tribunal so finds, it shall require the Marshal of the Sejm to temporarily perform the duties of the President of the Republic.
2. The Marshal of the Sejm shall, until the time of election of a new President of the Republic, temporarily discharge the duties of the President of the Republic in the following instances:
  - 1) the death of the President of the Republic;
  - 2) the President’s resignation from office;
  - 3) judicial declaration of the invalidity of the election to the Presidency or other reasons for not assuming office following the election;
  - 4) a declaration by the National Assembly of the President’s permanent incapacity to exercise his duties due to the state of his health; such declaration shall require a resolution adopted by a majority vote of at least two-thirds of the statutory number of members of the National Assembly;

- 5) dismissal of the President of the Republic from office by a judgment of the Tribunal of State.
- 6) If the Marshal of the Sejm is unable to discharge the duties of the President of the Republic, such duties shall be discharged by the Marshal of the Senate.
- 7) A person discharging the duties of the President of the Republic shall not shorten the term of office of the Sejm.

### **Article 132**

The President of the Republic shall hold no other offices nor discharge any public functions, with the exception of those connected with the duties of his office.

### **Article 133**

1. The President of the Republic, as representative of the State in foreign affairs, shall:
  - 1) ratify and renounce international agreements, and shall notify the Sejm and the Senate thereof;
  - 2) appoint and recall the plenipotentiary representatives of the Republic of Poland to other states and to international organizations;
  - 3) receive the Letters of Credence and recall of diplomatic representatives of other states and international organizations accredited to him.
2. The President of the Republic, before ratifying an international agreement may refer it to the Constitutional Tribunal with a request to adjudicate upon its conformity to the Constitution.
3. The President of the Republic shall cooperate with the Prime Minister and the appropriate minister in respect of foreign policy.

### **Article 134**

1. The President of the Republic shall be the Supreme Commander of the Armed Forces of the Republic of Poland.
2. The President of the Republic, in times of peace, shall exercise command over the Armed Forces through the Minister of National Defence.
3. The President of the Republic shall appoint, for a specified period of time, the Chief of the General Staff and commanders of branches of the Armed Forces. The duration of their term of office, the procedure for and terms of their dismissal before the end thereof, shall be specified by statute.
4. The President of the Republic, for a period of war, shall appoint the Commander-in-Chief of the Armed Forces on request of the Prime Minister. He may dismiss

the Commander-in-Chief of the Armed Forces in accordance with the same procedure. The authority of the Commander-in-Chief of the Armed Forces, as well as the principle of his subordination to the constitutional organs of the Republic of Poland, shall be specified by statute.

5. The President of the Republic, on request of the Minister of National Defence, shall confer military ranks as specified by statute.
6. The authority of the President of the Republic, regarding his supreme command of the Armed Forces, shall be specified in detail by statute.

### **Article 135**

The advisory organ to the President of the Republic regarding internal and external security of the State shall be the National Security Council.

### **Article 136**

In the event of a direct external threat to the State, the President of the Republic shall, on request of the Prime Minister, order a general or partial mobilization and deployment of the Armed Forces in defence of the Republic of Poland.

### **Article 137**

The President of the Republic shall grant Polish citizenship and shall give consent for renunciation of Polish citizenship.

### **Article 138**

The President of the Republic shall confer orders and decorations.

### **Article 139**

The President of the Republic shall have the power of pardon. The power of pardon may not be extended to individuals convicted by the Tribunal of State.

### **Article 140**

The President of the Republic may deliver a Message to the Sejm, to the Senate or to the National Assembly. Such Message shall not be a subject of debate.

### **Article 141**

1. The President of the Republic may, regarding particular matters, convene the Cabinet Council. The Cabinet Council shall be composed of the Council of Ministers whose debates shall be presided over by the President of the Republic.
2. The Cabinet Council shall not possess the competence of the Council of Ministers.

**Article 142**

1. The President of the Republic shall issue regulations and executive orders in accordance with the principles specified in Articles 92 and 93.
2. The President of the Republic shall issue decisions within the scope of discharge of his other authorities.

**Article 143**

The Presidential Chancellery shall be the organ of assistance to the President of the Republic. The President of the Republic shall establish the statute of the Presidential Chancellery and shall appoint and dismiss its Chief.

**Article 144**

1. The President of the Republic, exercising his constitutional and statutory authority, shall issue Official Acts.
2. Official Acts of the President shall require, for their validity, the signature of the Prime Minister who, by such signature, accepts responsibility therefor to the Sejm.
3. The provisions of para. 2 above shall not relate to:
  - 1) proclaiming elections to the Sejm and to the Senate;
  - 2) summoning the first sitting of a newly elected Sejm and Senate;
  - 3) shortening of the term of office of the Sejm in the instances specified in the Constitution;
  - 4) introducing legislation;
  - 5) proclaiming the holding of a nationwide referendum;
  - 6) signing or refusing to sign a bill;
  - 7) ordering the promulgation of a statute or an international agreement in the Journal of Laws of the Republic of Poland (Dziennik Ustaw);
  - 8) delivering a Message to the Sejm, to the Senate or to the National Assembly;
  - 9) making a referral to the Constitutional Tribunal;
  - 10) requesting the Supreme Chamber of Control to carry out an audit;
  - 11) nominating and appointing the Prime Minister;
  - 12) accepting resignation of the Council of Ministers and obliging it to temporarily continue with its duties;
  - 13) applying to the Sejm to bring a member of the Council of Ministers to responsibility before the Tribunal of State;
  - 14) dismissing a minister in whom the Sejm has passed a vote of no confidence;



- 15) convening the Cabinet Council;
- 16) conferring orders and decorations;
- 17) appointing judges;
- 18) exercising the power of pardon;
- 19) granting Polish citizenship and giving consent for renunciation of Polish citizenship;
- 20) appointing the First President of the Supreme Court;
- 21) appointing the President and Vice-President of the Constitutional Tribunal;
- 22) appointing the President of the Supreme Administrative Court;
- 23) appointing the presidents of the Supreme Court and vice-presidents of the Supreme Administrative Court;
- 24) requesting the Sejm to appoint the President of the National Bank of Poland;
- 25) appointing the members of the Council for Monetary Policy;
- 26) appointing and dismissing members of the National Security Council;
- 27) appointing members of the National Council of Radio Broadcasting and Television;
- 28) establishing the statute of the Presidential Chancellery and appointing or dismissing the Chief of the Presidential Chancellery.
- 29) issuing orders in accordance with the principles specified in Article 93;
- 30) resigning from the office of President of the Republic.

#### **Article 145**

1. The President of the Republic may be held accountable before the Tribunal of State for an infringement of the Constitution or statute, or for commission of an offence.
2. Bringing an indictment against the President of the Republic shall be done by resolution of the National Assembly passed by a majority of at least two-thirds of the statutory number of members of the National Assembly, on the motion of at least 140 members of the Assembly.
3. On the day on which an indictment, to be heard before the Tribunal of State, is brought against the President of the Republic, he shall be suspended from discharging all functions of his office. The provisions of Article 131 shall apply as appropriate.

## **Chapter VI**

# **THE COUNCIL OF MINISTERS AND GOVERNMENT ADMINISTRATION**

### **Article 146**

1. The Council of Ministers shall conduct the internal affairs and foreign policy of the Republic of Poland.
2. The Council of Ministers shall conduct the affairs of State not reserved to other State organs or local government.
3. The Council of Ministers shall manage the government administration.
4. To the extent and in accordance with the principles specified by the Constitution and statutes, the Council of Ministers, in particular, shall:
  - 1) ensure the implementation of statutes;
  - 2) issue regulations;
  - 3) coordinate and supervise the work of organs of State administration;
  - 4) protect the interests of the State Treasury;
  - 5) adopt a draft State Budget;
  - 6) supervise the implementation of the State Budget and pass a resolution on the closing of the State's accounts and report on the implementation of the Budget;
  - 7) ensure the internal security of the State and public order;
  - 8) ensure the external security of the State;
  - 9) exercise general control in the field of relations with other States and international organizations;
  - 10) conclude international agreements requiring ratification as well as accept and renounce other international agreements;
  - 11) exercise general control in the field of national defence and annually specify the number of citizens who are required to perform active military service;
  - 12) determine the organization and the manner of its own work.

### **Article 147**

1. The Council of Ministers shall be composed of the President of the Council of Ministers (Prime Minister) and ministers.
2. Vice-presidents of the Council of Ministers (Deputy Prime Ministers) may also be appointed within the Council of Ministers.
3. The Prime Minister and Deputy Prime Ministers may also discharge the functions of a minister.

4. The presidents of committees specified in statutes may also be appointed to membership in the Council of Ministers.

### **Article 148**

The Prime Minister shall:

- 1) represent the Council of Ministers;
- 2) manage the work of the Council of Ministers;
- 3) issue regulations;
- 4) ensure the implementation of the policies adopted by the Council of Ministers and specify the manner of their implementation;
- 5) coordinate and control the work of members of the Council of Ministers;
- 6) exercise, within the limits and by the means specified in the Constitution and statute, supervision of local government;
- 7) be the official superior of employees of the government administration.

### **Article 149**

1. Ministers shall direct a particular branch of government administration or perform tasks allocated to them by the Prime Minister. The scope of activity of a minister directing a branch of government administration shall be specified by statute.
2. A minister directing a branch of government administration shall issue regulations. The Council of Ministers, on the request of the Prime Minister, may repeal a regulation or order of a minister.
3. The provisions applicable to a minister directing a branch of government administration shall apply, as appropriate, to presidents of the committees referred to in Article 147, para. 4.

### **Article 150**

A member of the Council of Ministers shall not perform any activity inconsistent with his public duties.

### **Article 151**

The Prime Minister, Deputy Prime Ministers and ministers shall take the following oath in the presence of the President of the Republic:

“Assuming this office of Prime Minister (Deputy Prime Minister, minister) I do solemnly swear to be faithful to the provisions of the Constitution and other laws of the Republic of Poland, and that the good of the Homeland and the prosperity of its citizens shall forever remain my supreme obligation.”

The oath may also be taken with the additional sentence “So help me, God.”

#### **Article 152**

1. The voivod shall be the representative of the Council of Ministers in a voivodship.
2. The procedure for appointment and dismissal, as well as the scope of activity, of a voivod shall be specified by statute.

#### **Article 153**

1. A corps of civil servants shall operate in the organs of government administration in order to ensure a professional, diligent, impartial and politically neutral discharge of the State’s obligations.
2. The Prime Minister shall be the superior of such corps of civil servants.

#### **Article 154**

1. The President of the Republic shall nominate a Prime Minister who shall propose the composition of a Council of Ministers. The President of the Republic shall, within 14 days of the first sitting of the Sejm or acceptance of the resignation of the previous Council of Ministers, appoint a Prime Minister together with other members of a Council of Ministers and accept the oaths of office of members of such newly appointed Council of Ministers.
2. The Prime Minister shall, within 14 days following the day of his appointment by the President of the Republic, submit a programme of activity of the Council of Ministers to the Sejm, together with a motion requiring a vote of confidence. The Sejm shall pass such vote of confidence by an absolute majority of votes in the presence of at least half of the statutory number of Deputies.
3. In the event that a Council of Ministers has not been appointed pursuant to para.1 above or has failed to obtain a vote of confidence in accordance with para. 2 above, the Sejm, within 14 days of the end of the time periods specified in paras 1 and 2, shall choose a Prime Minister as well as members of the Council of Ministers as proposed by him, by an absolute majority of votes in the presence of at least half of the statutory number of Deputies. The President of the Republic shall appoint the Council of Ministers so chosen and accept the oaths of office of its members.

**Article 155**

1. In the event that a Council of Ministers has not been appointed pursuant to the provisions of Article 154, para. 3, the President of the Republic shall, within a period of 14 days, appoint a Prime Minister and, on his application, other members of the Council of Ministers. The Sejm, within 14 days following the appointment of the Council of Ministers by the President of the Republic, shall hold, in the presence of at least half of the statutory number of Deputies, a vote of confidence thereto.
2. In the event that a vote of confidence has not been granted to the Council of Ministers pursuant to para. 1, the President of the Republic shall shorten the term of office of the Sejm and order elections to be held.

**Article 156**

1. The members of the Council of Ministers shall be accountable to the Tribunal of State for an infringement of the Constitution or statutes, as well as for the commission of an offence connected with the duties of his office.
2. On the motion of the President of the Republic or at least 115 Deputies, resolution to bring a member of the Council of Ministers to account before the Tribunal of State shall be passed by the Sejm by a majority of three-fifths of the statutory number of Deputies.

**Article 157**

1. The members of the Council of Ministers shall be collectively responsible to the Sejm for the activities of the Council of Ministers.
2. The members of the Council of Ministers shall be individually responsible to the Sejm for those matters falling within their competence or assigned to them by the Prime Minister.

**Article 158**

1. The Sejm shall pass a vote of no confidence in the Council of Ministers by a majority of votes of the statutory number of Deputies, on a motion moved by at least 46 Deputies and which shall specify the name of a candidate for Prime Minister. If such a resolution has been passed by the Sejm, the President of the Republic shall accept the resignation of the Council of Ministers and appoint a new Prime Minister as chosen by the Sejm, and, on his application, the other members of the Council of Ministers and accept their oath of office.
2. A motion to pass a resolution referred to in para. 1 above, may be put to a vote no sooner than 7 days after it has been submitted. A subsequent motion of a like kind may be submitted no sooner than after the end of 3 months from the day the

previous motion was submitted. A subsequent motion may be submitted before the end of 3 months if such motion is submitted by at least 115 Deputies.

#### **Article 159**

1. The Sejm may pass a vote of no confidence in an individual minister. A motion to pass such a vote of no confidence may be submitted by at least 69 Deputies. The provisions of Article 158, para. 2 shall apply as appropriate.
2. The President of the Republic shall recall a minister in whom a vote of no confidence has been passed by the Sejm by a majority of votes of the statutory number of Deputies.

#### **Article 160**

The Prime Minister may submit to the Sejm a motion requiring a vote of confidence in the Council of Ministers. A vote of confidence in the Council of Ministers shall be granted by a majority of votes in the presence of at least half of the statutory number of Deputies.

#### **Article 161**

The President of the Republic shall, on the application of the Prime Minister, effect changes in the composition of the Council of Ministers.

#### **Article 162**

1. The Prime Minister shall submit the resignation of the Council of Ministers at the first sitting of a newly elected Sejm.
2. The Prime Minister shall also submit the resignation of the Council of Ministers in the following instances:
  - 1) when a vote of confidence in the Council of Ministers has not been passed by the Sejm;
  - 2) when a vote of no confidence has been passed against the Council of Ministers;
  - 3) when the Prime Minister himself has resigned from office.
3. The President of the Republic, when accepting the resignation of the Council of Ministers, shall oblige it to continue with its duties until a new Council of Ministers is appointed.
4. The President of the Republic may, in the case referred to in para. 2, subpara. 3 above, refuse to accept the resignation of the Council of Ministers.

## **Chapter VII**

### **LOCAL GOVERNMENT**

#### **Article 163**

Local government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities.

#### **Article 164**

1. The commune (gmina) shall be the basic unit of local government.
2. Other units of regional and/or local government shall be specified by statute.
3. The commune shall perform all tasks of local government not reserved to other units of local government.

#### **Article 165**

1. Units of local government shall possess legal personality. They shall have rights of ownership and other property rights.
2. The self-governing nature of units of local government shall be protected by the courts.

#### **Article 166**

1. Public duties aimed at satisfying the needs of a self-governing community shall be performed by units of local government as their direct responsibility.
2. If the fundamental needs of the State shall so require, a statute may instruct units of local government to perform other public duties. The mode of transfer and manner of performance of the duties so allocated shall be specified by statute.
3. The administrative courts shall settle jurisdictional disputes between units of local government and units of government administration.

#### **Article 167**

1. Units of local government shall be assured public funds adequate for the performance of the duties assigned to them.
2. The revenues of units of local government shall consist of their own revenues as well as general subsidies and specific grants from the State Budget.
3. The sources of revenues for units of local government shall be specified by statute.
4. Alterations to the scope of duties and authorities of units of local government shall be made in conjunction with appropriate alterations to their share of public revenues.

**Article 168**

To the extent established by statute, units of local government shall have the right to set the level of local taxes and charges.

**Article 169**

1. Units of local government shall perform their duties through constitutive and executive organs.
2. Elections to constitutive organs shall be universal, direct, equal and shall be conducted by secret ballot. The principles and procedures for submitting candidates and for the conduct of elections, as well as the requirements for the validity of elections, shall be specified by statute.
3. The principles and procedures for the election and dismissal of executive organs of units of local government shall be specified by statute.
4. The internal organizational structure of units of local government shall be specified, within statutory limits, by their constitutive organs.

**Article 170**

Members of a self-governing community may decide, by means of a referendum, matters concerning their community, including the dismissal of an organ of local government established by direct election. The principles of and procedures for conducting a local referendum shall be specified by statute.

**Article 171**

1. The legality of actions by a local government shall be subject to review.
2. The organs exercising review over the activity of units of local government shall be: the Prime Minister and voivods and regarding financial matters - regional audit chambers.
3. On a motion of the Prime Minister, the Sejm may dissolve a constitutive organ of local government if it has flagrantly violated the Constitution or a statute.

**Article 172**

1. Units of local government shall have the right to associate.
2. A unit of local government shall have the right to join international associations of local and regional communities as well as cooperate with local and regional communities of other states.
3. The principles governing the exercise of the rights referred to in paras. 1 and 2 above by units of local government shall be specified by statute.



## **Chapter VIII COURTS AND TRIBUNALS**

### **Article 173**

The courts and tribunals shall constitute a separate power and shall be independent of other branches of power.

### **Article 174**

The courts and tribunals shall pronounce judgments in the name of the Republic of Poland.

## **COURTS**

### **Article 175**

1. The administration of justice in the Republic of Poland shall be implemented by the Supreme Court, the common courts, administrative courts and military courts.
2. Extraordinary courts or summary procedures may be established only during a time of war.

### **Article 176**

1. Court proceedings shall have at least two stages.
2. The organizational structure and jurisdiction as well as procedure of the courts shall be specified by statute.

### **Article 177**

The common courts shall implement the administration of justice concerning all matters save for those statutorily reserved to other courts.

### **Article 178**

1. Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.
2. Judges shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of their office and the scope of their duties.
3. A judge shall not belong to a political party, a trade union or perform public activities incompatible with the principles of independence of the courts and judges.

**Article 179**

Judges shall be appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary.

**Article 180**

1. Judges shall not be removable.
2. Recall of a judge from office, suspension from office, transfer to another bench or position against his will, may only occur by virtue of a court judgment and only in those instances prescribed in statute.
3. A judge may be retired as a result of illness or infirmity which prevents him discharging the duties of his office. The procedure for doing so, as well as for appealing against such decision, shall be specified by statute.
4. A statute shall establish an age limit beyond which a judge shall proceed to retirement.
5. Where there has been a reorganization of the court system or changes to the boundaries of court districts, a judge may be allocated to another court or retired with maintenance of his full remuneration.

**Article 181**

A judge shall not, without prior consent granted by a court specified by statute, be held criminally responsible nor deprived of liberty. A judge shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The president of the competent local court shall be forthwith notified of any such detention and may order an immediate release of the person detained.

**Article 182**

A statute shall specify the scope of participation by the citizenry in the administration of justice.

**Article 183**

1. The Supreme Court shall exercise supervision over common and military courts regarding judgments.
2. The Supreme Court shall also perform other activities specified in the Constitution and statutes.

3. The First President of the Supreme Court shall be appointed by the President of the Republic for a 6-year term of office from amongst candidates proposed by the General Assembly of the Judges of the Supreme Court.

#### **Article 184**

The Supreme Administrative Court and other administrative courts shall exercise, to the extent specified by statute, control over the performance of public administration. Such control shall also extend to judgments on the conformity to statute of resolutions of organs of local government and normative acts of territorial organs of government administration.

#### **Article 185**

The President of the Supreme Administrative Court shall be appointed by the President of the Republic for a 6-year term of office from amongst candidates proposed by the General Assembly of the Judges of the Supreme Administrative Court.

#### **Article 186**

1. The National Council of the Judiciary shall safeguard the independence of courts and judges.
2. The National Council of the Judiciary may make application to the Constitutional Tribunal regarding the conformity to the Constitution of normative acts to the extent to which they relate to the independence of courts and judges.

#### **Article 187**

1. The National Council of the Judiciary shall be composed as follows:
  - 1) the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court and an individual appointed by the President of the Republic;
  - 2) 15 judges chosen from amongst the judges of the Supreme Court, common courts, administrative courts and military courts;
  - 3) 4 members chosen by the Sejm from amongst its Deputies and 2 members chosen by the Senate from amongst its Senators.
2. The National Council of the Judiciary shall choose, from amongst its members, a chairperson and two deputy chairpersons.
3. The term of office of those chosen as members of the National Council of the Judiciary shall be 4 years.

4. The organizational structure, the scope of activity and procedures for work of the National Council of the Judiciary, as well as the manner of choosing its members, shall be specified by statute.

## **THE CONSTITUTIONAL TRIBUNAL**

### **Article 188**

The Constitutional Tribunal shall adjudicate regarding the following matters:

- 1) the conformity of statutes and international agreements to the Constitution;
- 2) the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute;
- 3) the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;
- 4) the conformity to the Constitution of the purposes or activities of political parties;
- 5) complaints concerning constitutional infringements, as specified in Article 79, para. 1.

### **Article 189**

The Constitutional Tribunal shall settle disputes over authority between central constitutional organs of the State.

### **Article 190**

1. Judgments of the Constitutional Tribunal shall be of universally binding application and shall be final.
2. Judgments of the Constitutional Tribunal regarding matters specified in Article 188, shall be required to be immediately published in the official publication in which the original normative act was promulgated. If a normative act has not been promulgated, then the judgment shall be published in the Official Gazette of the Republic of Poland, Monitor Polski.
3. A judgment of the Constitutional Tribunal shall take effect from the day of its publication, however, the Constitutional Tribunal may specify another date for the end of the binding force of a normative act. Such time period may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. Where a judgment has financial consequences not provided for in the Budget, the Constitutional Tribunal shall specify date for the end of the binding force of the normative act concerned, after seeking the opinion of the Council of Ministers.

4. A judgment of the Constitutional Tribunal on the non-conformity to the Constitution, an international agreement or statute, of a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for reopening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings.
5. Judgments of the Constitutional Tribunal shall be made by a majority of votes.

### **Article 191**

1. The following may make application to the Constitutional Tribunal regarding matters specified in Article 188:
  - 1) the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights,
  - 2) the National Council of the Judiciary, to the extent specified in Article 186, para. 2;
  - 3) the constitutive organs of units of local government;
  - 4) the national organs of trade unions as well as the national authorities of employers' organizations and occupational organizations;
  - 5) churches and religious organizations;
  - 6) the subjects referred to in Article 79 to the extent specified therein.
2. The subjects referred to in para. 1 subparas. 3-5, above, may make such application if the normative act relates to matters relevant to the scope of their activity.

### **Article 192**

The following persons may make application to the Constitutional Tribunal in respect of matters specified in Article 189: the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, the First President of the Supreme Court, the President of the Supreme Administrative Court and the President of the Supreme Chamber of Control.

### **Article 193**

Any court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or statute, if the answer to such question of law will determine an issue currently before such court.

**Article 194**

1. The Constitutional Tribunal shall be composed of 15 judges chosen individually by the Sejm for a term of office of 9 years from amongst persons distinguished by their knowledge of the law. No person may be chosen for more than one term of office.
2. The President and Vice-President of the Constitutional Tribunal shall be appointed by the President of the Republic from amongst candidates proposed by the General Assembly of the Judges of the Constitutional Tribunal.

**Article 195**

1. Judges of the Constitutional Tribunal, in the exercise of their office, shall be independent and subject only to the Constitution.
2. Judges of the Constitutional Tribunal shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of the office and the scope of their duties.
3. Judges of the Constitutional Tribunal, during their term of office, shall not belong to a political party, a trade union or perform public activities incompatible with the principles of the independence of the courts and judges.

**Article 196**

A judge of the Constitutional Tribunal shall not be held criminally responsible or deprived of liberty without prior consent granted by the Constitutional Tribunal. A judge shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The President of the Constitutional Tribunal shall be notified forthwith of any such detention and may order an immediate release of the person detained.

**Article 197**

The organization of the Constitutional Tribunal, as well as the mode of proceedings before it, shall be specified by statute.

**THE TRIBUNAL OF STATE****Article 198**

1. For violations of the Constitution or of a statute committed by them within their office or within its scope, the following persons shall be constitutionally accountable to the Tribunal of State: the President of the Republic, the Prime Minister and members of the Council of Ministers, the President of the National Bank of Poland,

the President of the Supreme Chamber of Control, members of the National Council of Radio Broadcasting and Television, persons to whom the Prime Minister has granted powers of management over a ministry, and the Commander-in-Chief of the Armed Forces.

2. Deputies and Senators shall also be constitutionally accountable to the Tribunal of State to extent specified in Article 107.
3. The types of punishment which the Tribunal of State may impose shall be specified by statute.

### **Article 199**

1. The Tribunal of State shall be composed of a chairperson, two deputy chairpersons and 16 members chosen by the Sejm for the current term of office of the Sejm from amongst those who are not Deputies or Senators. The deputy chairpersons of the Tribunal and at least one half of the members of the Tribunal shall possess the qualifications required to hold the office of judge.
2. The First President of the Supreme Court shall be chairperson of the Tribunal of State.
3. The members of the Tribunal of State, within the exercise of their office as judges of the Tribunal, shall be independent and subject only to the Constitution and statutes.

### **Article 200**

A member of the Tribunal of State shall not be held criminally responsible nor deprived of liberty without prior consent granted by the Tribunal of State. A member of the Tribunal of State shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The chairperson of the Tribunal of State shall be notified forthwith of any such detention and may order an immediate release of the person detained.

### **Article 201**

The organization of the Tribunal of State, as well as the mode of proceedings before it, shall be specified by statute.

## **Chapter IX**

# **ORGANS OF STATE CONTROL AND FOR DEFENCE OF RIGHTS**

### **THE SUPREME CHAMBER OF CONTROL**

#### **Article 202**

1. The Supreme Chamber of Control shall be the chief organ of state audit.
2. The Supreme Chamber of Control shall be subordinate to the Sejm.
3. The Supreme Chamber of Control shall act in accordance with the principles of collegiality.

#### **Article 203**

1. The Supreme Chamber of Control shall audit the activity of the organs of government administration, the National Bank of Poland, State legal persons and other State organizational units regarding the legality, economic prudence, efficacy and diligence.
2. The Supreme Chamber of Control may audit the activity of the organs of local government, communal legal persons and other communal organizational units regarding the legality, economic prudence and diligence.
3. The Supreme Chamber of Control may also audit, regarding the legality and economic prudence, the activity of other organizational units and economic subjects, to the extent to which they utilize State or communal property or resources or satisfy financial obligations to the State.

#### **Article 204**

1. The Supreme Chamber of Control shall present to the Sejm:
  - 1) an analysis of the implementation of the State Budget and the purposes of monetary policy;
  - 2) an opinion concerning the vote to accept the accounts for the preceding fiscal year presented by the Council of Ministers;
  - 3) information on the results of audits, conclusions and submissions specified by statute.
2. The Supreme Chamber of Control shall present an annual report on its activities to the Sejm.



**Article 205**

1. The President of the Supreme Chamber of Control shall be appointed by the Sejm, with the consent of the Senate, for a period of 6 years, which may be extended for one more period only.
2. The President of the Supreme Chamber of Control shall not hold any other post, except for a professorship in an institute of higher education, nor perform any other professional activities.
3. The President of the Supreme Chamber of Control shall not belong to a political party, a trade union or perform public activities incompatible with the dignity of his office.

**Article 206**

The President of the Supreme Chamber of Control shall not be held criminally responsible nor deprived of liberty without prior consent granted by the Sejm. The President of the Supreme Chamber of Control shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The Marshal of the Sejm shall be notified forthwith of such detention and may order an immediate release of the person detained.

**Article 207**

The organization and mode of work of the Supreme Chamber of Control shall be specified by statute.

**THE COMMISSIONER FOR CITIZENS' RIGHTS****Article 208**

1. The Commissioner for Citizens' Rights shall safeguard the freedoms and rights of persons and citizens specified in the Constitution and other normative acts.
2. The scope and mode of work of the Commissioner for Citizens' Rights shall be specified by statute.

**Article 209**

1. The Commissioner for Citizens' Rights shall be appointed by the Sejm, with the consent of the Senate, for a period of 5 years.
2. The Commissioner for Citizens' Rights shall not hold any other post, except for a professorship in an institute of higher education, nor perform any other professional activities.

3. The Commissioner for Citizens' Rights shall not belong to a political party, a trade union or perform other public activities incompatible with the dignity of his office.

#### **Article 210**

The Commissioner for Citizens' Rights shall be independent in his activities, independent of other State organs and shall be accountable only to the Sejm in accordance with principles specified by statute.

#### **Article 211**

The Commissioner for Citizens' Rights shall not be held criminally responsible nor deprived of liberty without prior consent granted by the Sejm. The Commissioner for Citizens' Rights shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The Marshal of the Sejm shall be notified forthwith of any such detention and may order an immediate release of the person detained.

#### **Article 212**

The Commissioner for Citizens' Rights shall annually inform the Sejm and the Senate about his activities and report on the degree of respect accorded to the freedoms and rights of persons and citizens.

### **THE NATIONAL COUNCIL OF RADIO BROADCASTING AND TELEVISION**

#### **Article 213**

1. The National Council of Radio Broadcasting and Television shall safeguard the freedom of speech, the right to information as well as safeguard the public interest regarding radio broadcasting and television.
2. The National Council of Radio Broadcasting and Television shall issue regulations and, in individual cases, adopt resolutions.

#### **Article 214**

1. The members of the National Council of Radio Broadcasting and Television shall be appointed by the Sejm, the Senate and the President of the Republic.
2. A member of the National Council of Radio Broadcasting and Television shall not belong to a political party, a trade union or perform public activities incompatible with the dignity of his function.

**Article 215**

The principles for and mode of work of the National Council of Radio Broadcasting and Television, its organization and detailed principles for appointing its members, shall be specified by statute.

## **Chapter X PUBLIC FINANCES**

**Article 216**

1. Financial resources devoted to public purposes shall be collected and disposed of in the manner specified by statute.
2. The acquisition, disposal and encumbrance of property, stocks or shares, issue of securities by the State Treasury, the National Bank of Poland or other State legal persons shall be done in accordance with principles and by procedures specified by statute.
3. Any monopoly shall be established by means of statute.
4. The contracting of loans as well as granting guarantees and financial sureties by the State shall be done in accordance with principles and by procedures specified by statute.
5. It shall be neither permissible to contract loans nor provide guarantees and financial sureties which would engender a national public debt exceeding three-fifths of the value of the annual gross domestic product. The method for calculating the value of the annual gross domestic product and national public debt shall be specified by statute.

**Article 217**

The imposition of taxes, as well as other public imposts, the specification of those subject to the tax and the rates of taxation, as well as the principles for granting tax reliefs and remissions, along with categories of taxpayers exempt from taxation, shall be by means of statute.

**Article 218**

The organization of the State Treasury and the manner of management of the assets of the State Treasury shall be specified by statute.

**Article 219**

1. The Sejm shall adopt the State budget for a fiscal year by means of a Budget [ustawa budżetowa - budgetary statute].

2. The principles of and procedure for preparation of a draft State Budget, the level of its detail and the requirements for a draft State Budget, as well as the principles of and procedure for implementation of the Budget, shall be specified by statute.
3. In exceptional cases, the revenues and expenditures of the State for a period shorter than one year may be specified in an interim budget. The provisions relating to a draft State Budget shall apply, as appropriate, to a draft interim budget.
4. If a State Budget or an interim budget have not come into force on the day of commencement of a fiscal year, the Council of Ministers shall manage State finances pursuant to the draft Budget.

#### **Article 220**

1. The increase in spending or the reduction in revenues from those planned by the Council of Ministers may not lead to the adoption by the Sejm of a budget deficit exceeding the level provided in the draft Budget.
2. The Budget shall not provide for covering a budget deficit by way of contracting credit obligations to the State's central bank.

#### **Article 221**

The right to introduce legislation concerning a Budget, an interim budget, amendments to the Budget, a statute on the contracting of public debt, as well as a statute granting financial guarantees by the State, shall belong exclusively to the Council of Ministers.

#### **Article 222**

The Council of Ministers shall submit to the Sejm a draft Budget for the next year no later than 3 months before the commencement of the fiscal year. In exceptional instances, the draft may be submitted later.

#### **Article 223**

The Senate may, within the 20 days following receipt of the Budget, adopt amendments thereto.

#### **Article 224**

1. The President of the Republic shall sign the Budget or interim Budget submitted to him by the Marshal of the Sejm within 7 days of receipt thereof, and order its promulgation in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*). The provisions of Article 122, para. 5 shall not apply to the Budget or any interim budget.

2. If the President of the Republic has made reference to the Constitutional Tribunal for an adjudication upon the conformity to the Constitution of the Budget or interim budget before signing it, the Tribunal shall adjudicate such matter no later than within a period of 2 months from the day of submission of such reference to the Tribunal.

#### **Article 225**

If, after 4 months from the day of submission of a draft Budget to the Sejm, it has not been adopted or presented to the President of the Republic for signature, the President of the Republic may, within the following of 14 days, order the shortening of the Sejm's term of office.

#### **Article 226**

1. The Council of Ministers, within the 5-month period following the end of the fiscal year, shall present to the Sejm a report on the implementation of the Budget together with information on the condition of the State debt.
2. Within 90 days following receipt of the report, the Sejm shall consider the report presented to it, and, after seeking the opinion of the Supreme Chamber of Control, shall pass a resolution on whether to grant or refuse to grant approval of the financial accounts submitted by the Council of Ministers.

#### **Article 227**

1. The central bank of the State shall be the National Bank of Poland. It shall have the exclusive right to issue money as well as to formulate and implement monetary policy. The National Bank of Poland shall be responsible for the value of Polish currency.
2. The organs of the National Bank of Poland shall be: the President of the National Bank of Poland, the Council for Monetary Policy as well as the Board of the National Bank of Poland.
3. The Sejm, on request of the President of the Republic, shall appoint the President of the National Bank of Poland for a period of 6 years.
4. The President of the National Bank of Poland shall not belong to a political party, a trade union or perform public activities incompatible with the dignity of his office.
5. The Council for Monetary Policy shall be composed of the President of the National Bank of Poland, who shall preside over it, as well as persons distinguished by their knowledge of financial matters - appointed, in equal numbers, by the President of the Republic, the Sejm and the Senate for a period of 6 years.

6. The Council for Monetary Policy shall annually formulate the aims of monetary policy and present them to the Sejm at the same time as the submission of the Council of Ministers' draft Budget. Within 5 months following the end of the fiscal year, the Council for Monetary Policy shall submit to the Sejm a report on the achievement of the purposes of monetary policy.
7. The organization and principles of activity of the National Bank of Poland, as well as detailed principles for the appointment and dismissal of its organs, shall be specified by statute.

## **Chapter XI**

### **EXTRAORDINARY MEASURES**

#### **Article 228**

1. In situations of particular danger, if ordinary constitutional measures are inadequate, any of the following appropriate extraordinary measures may be introduced: martial law, a state of emergency or a state of natural disaster.
2. Extraordinary measures may be introduced only by regulation, issued upon the basis of statute, and which shall additionally require to be publicized.
3. The principles for activity by organs of public authority as well as the degree to which the freedoms and rights of persons and citizens may be subject to limitation for the duration of a period requiring any extraordinary measures shall be established by statute.
4. A statute may specify the principles, scope and manner of compensating for loss of property resulting from limitation of the freedoms and rights of persons and citizens during a period requiring introduction of extraordinary measures.
5. Actions undertaken as a result of the introduction of any extraordinary measure shall be proportionate to the degree of threat and shall be intended to achieve the swiftest restoration of conditions allowing for the normal functioning of the State.
6. During a period of introduction of extraordinary measures, the following shall not be subject to change: the Constitution, the Acts on Elections to the Sejm, the Senate and organs of local government, the Act on Elections to the Presidency, as well as statutes on extraordinary measures.
7. During a period of introduction of extraordinary measures, as well as within the period of 90 days following its termination, the term of office of the Sejm may not be shortened, nor may a nationwide referendum, nor elections to the Sejm, Senate, organs of local government nor elections for the Presidency be held, and the term of office of such organs shall be appropriately prolonged. Elections to organs of local government shall be possible only in those places where the extraordinary measures have not been introduced.

**Article 229**

In the case of external threats to the State, acts of armed aggression against the territory of the Republic of Poland or when an obligation of common defence against aggression arises by virtue of international agreement, the President of the Republic may, on request of the Council of Ministers, declare a state of martial law in a part of or upon the whole territory of the State.

**Article 230**

1. In the case of threats to the constitutional order of the State, to security of the citizenry or public order, the President of the Republic may, on request of the Council of Ministers, introduce for a definite period no longer than 90 days, a state of emergency in a part of or upon the whole territory of the State.
2. Extension of a state of emergency may be made once only for a period no longer than 60 days and with the consent of the Sejm.

**Article 231**

The President of the Republic shall submit the regulation on the introduction of martial law or a state of emergency to the Sejm within 48 hours of signing such regulation. The Sejm shall immediately consider the regulation of the President. The Sejm, by an absolute majority of votes taken in the presence of at least half the statutory number of Deputies, may annul the regulation of the President.

**Article 232**

In order to prevent or remove the consequences of a natural catastrophe or a technological accident exhibiting characteristics of a natural disaster, the Council of Ministers may introduce, for a definite period no longer than 30 days, a state of natural disaster in a part of or upon the whole territory of the State. An extension of a state of natural disaster may be made with the consent of the Sejm.

**Article 233**

1. The statute specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency shall not limit the freedoms and rights specified in Article 30 (the dignity of the person), Article 34 and Article 36 (citizenship), Article 38 (protection of life), Article 39, Article 40 and Article 41, para.4 (humane treatment), Article 42 (ascription of criminal responsibility), Article 45 (access to a court), Article 47 (personal rights), Article 53 (conscience and religion), Article 63 (petitions), as well as Article 48 and Article 72 (family and children).

2. Limitation of the freedoms and rights of persons and citizens only by reason of race, gender, language, faith or lack of it, social origin, ancestry or property shall be prohibited.
3. The statute specifying the scope of limitations of the freedoms and rights of persons and citizens during states of natural disasters may limit the freedoms and rights specified in Article 22 (freedom of economic activity), Article 41, paras. 1, 3 and 5 (personal freedom), Article 50 (inviolability of the home), Article 52, para. 1 (freedom of movement and sojourn on the territory of the Republic of Poland), Article 59, para. 3 (the right to strike), Article 64 (the right of ownership), Article 65, para. 1 (freedom to work), Article 66, para. 1 (the right to safe and hygienic conditions of work) as well as Article 66, para. 2 (the right to rest).

#### **Article 234**

1. Whenever, during a period of martial law, the Sejm is unable to assemble for a sitting, the President of the Republic shall, on application of the Council of Ministers, and within the scope and limits specified in Article 228, paras. 3-5, issue regulations having the force of statute. Such regulations must be approved by the Sejm at its next sitting.
2. The regulations, referred to in para.1 above shall have the character of universally binding law.

## **Chapter XII AMENDING THE CONSTITUTION**

#### **Article 235**

1. A bill to amend the Constitution may be submitted by the following: at least one-fifth of the statutory number of Deputies; the Senate; or the President of the Republic.
2. Amendments to the Constitution shall be made by means of a statute adopted by the Sejm and, thereafter, adopted in the same wording by the Senate within a period of 60 days.
3. The first reading of a bill to amend the Constitution may take place no sooner than 30 days after the submission of the bill to the Sejm.
4. A bill to amend the Constitution shall be adopted by the Sejm by a majority of at least two-thirds of votes in the presence of at least half of the statutory number of Deputies, and by the Senate by an absolute majority of votes in the presence of at least half of the statutory number of Senators.



5. The adoption by the Sejm of a bill amending the provisions of Chapters I, II or XII of the Constitution shall take place no sooner than 60 days after the first reading of the bill.
6. If a bill to amend the Constitution relates to the provisions of Chapters I, II or XII, the subjects specified in para. 1 above may require, within 45 days of the adoption of the bill by the Senate, the holding of a confirmatory referendum. Such subjects shall make application in the matter to the Marshal of the Sejm, who shall order the holding of a referendum within 60 days of the day of receipt of the application. The amendment to the Constitution shall be deemed accepted if the majority of those voting express support for such amendment.
7. After conclusion of the procedures specified in paras 4 and 6 above, the Marshal of the Sejm shall submit the adopted statute to the President of the Republic for signature. The President of the Republic shall sign the statute within 21 days of its submission and order its promulgation in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*).

## **Chapter XIII**

### **FINAL AND TRANSITIONAL PROVISIONS**

#### **Article 236**

1. Within a period of 2 years from the day on which the Constitution comes into force, the Council of Ministers shall present to the Sejm such bills as are necessary for the implementation of the Constitution.
2. Statutes bringing Article 176 para. 1 into effect, to the extent relevant to proceedings before administrative courts, shall be adopted before the end of 5 years from the day on which the Constitution comes into force. The provisions relating to extraordinary review of judgments by the Supreme Administrative Court shall remain in effect until the entry into force of such statutes.

#### **Article 237**

1. Within the 4-year period following the coming into force of this Constitution, cases of misdemeanours shall be heard and determined by the Boards for Adjudication of Misdemeanours attached to district courts, but the punishment of arrest may be imposed only by a court.
2. Appeals from a judgment of a Board shall be considered by a court.

#### **Article 238**

1. The term of office of constitutional organs of public power and the individuals composing them, whether elected or appointed before the coming into force of the

Constitution, shall end with the completion of the period specified in provisions valid before the day on which the Constitution comes into force.

2. In the event that provisions valid prior to the entry into force of the Constitution do not specify any such term of office, and from the election or appointment there has expired a period longer than that specified in the Constitution, the constitutional term of office of organs of public power or individuals composing them shall end one year after the day on which the Constitution comes into force.
3. If provisions valid before to the entry into force of the Constitution do not specify any such term of office, and from the day of election or appointment there has expired a period shorter than that specified in the Constitution, the time for which such organs or individuals shall serve in accordance with existing provisions shall be included in the term of office specified in the Constitution.

#### **Article 239**

1. Within 2 years of the day on which the Constitution comes into force a judgment of the Constitutional Tribunal of the non-conformity to the Constitution of statutes adopted before its coming into force shall not be final and shall be required to be considered by the Sejm which may reject the judgment of the Constitutional Tribunal by a two-third majority vote in the presence of at least half of the statutory number of Deputies. The foregoing provision shall not concern judgments issued in response to questions of law submitted to the Constitutional Tribunal.
2. Proceedings in cases to formulate a universally binding interpretation of statutes by the Constitutional Tribunal instituted before the coming into force of the Constitution, shall be discontinued.
3. On the day on which the Constitution comes into force, resolutions of the Constitutional Tribunal on interpretation of statutes shall lose their universally binding force, but final judgments of the courts and other final decisions made by organs of public authority whilst taking into account the meaning of provisions as decided by the Constitutional Tribunal by way of universally binding interpretation of statutes, shall remain in force.

#### **Article 240**

Within one year of the day on which the Constitution comes into force, the Budget may allow for the covering of the budget deficit by contracting debt in the central bank of the State.

#### **Article 241**

1. International agreements, previously ratified by the Republic of Poland upon the basis of constitutional provisions valid at the time of their ratification and promul-

gated in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*), shall be considered as agreements ratified with prior consent granted by statute, and shall be subject to the provisions of Article 91 of the Constitution if their connection with the categories of matters mentioned in Article 89, para. 1 of the Constitution derives from the terms of an international agreement.

2. The Council of Ministers shall, within 2 years of the coming into force of the Constitution, present to the Sejm a list of international agreements containing provisions not in conformity to the Constitution.
3. Senators, elected before the day on which the Constitution comes into force, who have not attained 30 years of age, shall maintain their seats until the end of the term of office for which they were elected.
4. Joint holding of the mandate of a Deputy or Senator with a function or employment forbidden by Article 103, shall result in the expiry of the mandate after one month from the day on which the Constitution comes into force, unless the Deputy or Senator resigns from such function or such employment ceases.
5. Cases subject to legislative procedure or under consideration by the Constitutional Tribunal or the Tribunal of State, and which have been commenced before the coming into force of the Constitution, shall be conducted in accordance with the constitutional provisions valid on the day of the commencement thereof.
6. Within 2 years of the coming into force of the Constitution, the Council of Ministers shall identify which resolutions of the Council of Ministers and orders of ministers or other organs of government administration adopted or issued prior to the day on which the Constitution comes into force require, pursuant to the conditions specified in Article 87, para. 1 and Article 92 of the Constitution, are to be replaced by regulations issued upon the basis of statutes to be drafted and submitted, at the appropriate time, to the Sejm by the Council of Ministers. At the same time, the Council of Ministers shall submit to the Sejm a bill specifying those normative acts issued by the government administration before the day on which the Constitution comes into force which shall become resolutions or orders within the meaning of Article 93 of the Constitution.
7. Enactments of local law as well as provisions issued by communes shall become enactments of local law within the meaning of Article 87, para. 2 of the Constitution.

## **Article 242**

The following are hereby repealed:

- 1) the Constitutional Act of 17th October 1992, on the Mutual Relations between the Legislative and Executive Institutions of the Republic of Poland and on Local Self-

government (Dziennik Ustaw of 1992 No. 84, item 426; of 1995 No. 38, item 184, No. 150, item 729 as well as of 1996 No. 106, item 488);

- 2) the Constitutional Act of 23rd April 1992 on the Procedure for Preparing and Enacting a Constitution for the Republic of Poland (Dziennik Ustaw of 1992 No. 67, item 336; and of 1994 No. 61, item 251).

### **Article 243**

The Constitution of the Republic of Poland shall come into force on the expiry of the 3-month period following the day of its promulgation.