

- 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, 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 para 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, para 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 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 co-operation with international and non-governmental organisations

- 1 The Secretary General shall, on matters within the competence of the Authority, make suitable arrangements, with the approval of the Council, for consultation and co-operation with international and non-governmental organisations recognised by the Economic and Social Council of the United Nations.
- 2 Any organisation with which the Secretary General has entered into an arrangement under para 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 organisations in appropriate cases.
- 3 The Secretary General may distribute to States Parties written reports submitted by the non-governmental organisations referred to in para 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, para 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. 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, para 2, and Annex IV, Article 11, be provided with such funds as it may require to carry out its functions, and shall receive technology as provided in Article 144 and other relevant provisions of this Convention.

SUB-SECTION F FINANCIAL ARRANGEMENTS OF THE AUTHORITY

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SUB-SECTION 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.

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SUB-SECTION H SUSPENSION OF THE EXERCISE OF RIGHTS
AND PRIVILEGES OF MEMBERS

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SECTION 5 SETTLEMENT OF DISPUTES AND ADVISORY OPINIONS

Article 186 Sea Bed Disputes Chamber of the International Tribunal for the Law of the Sea

The establishment of the Sea Bed 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.

Article 187 Jurisdiction of the Sea Bed Disputes Chamber

The Sea Bed 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:

- (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, para 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, para 2(b), and has duly fulfilled the conditions referred to in Annex III, Article 4, para 6, and Article 13, para 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, para 2(b), where it is alleged that the Authority has incurred liability as provided in Annex III, 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 Sea Bed Disputes Chamber or to binding commercial arbitration

- 1 Disputes between States Parties referred to in Article 187, sub-para (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, Articles 15 and 17; or
 - (b) at the request of any party to the dispute, to an *ad hoc* chamber of the Sea Bed 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, sub-para (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 Sea Bed 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 Sea Bed Disputes Chamber, the arbitral tribunal shall refer such question to the Sea Bed Disputes Chamber for such ruling. The arbitral tribunal shall then proceed to render its award in conformity with the ruling of the Sea Bed 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 Sea Bed 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 Sea Bed 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.

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, sub-para (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 Sea Bed 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 ENVIRONMENT¹⁷

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PART XIII

MARINE SCIENTIFIC RESEARCH

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PART XIV

DEVELOPMENT AND TRANSFER OF MARINE TECHNOLOGY

...

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, para 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, para 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.

¹⁷ See Chapter 18.

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, para 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, section 1, or another conciliation procedure.
- 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;
 - (b) the International Court of Justice;
 - (c) an arbitral tribunal constituted in accordance with Annex VII;
 - (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.
- 2 A declaration made under para 1 shall not affect or be affected by the obligation of a state Party to accept the jurisdiction of the Sea Bed Disputes Chamber of the 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.
- 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, unless the parties otherwise agree.
- 6 A declaration made under para 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 Sea Bed Disputes Chamber of the International Tribunal for the Law of the Sea established in accordance with Annex VI, 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.

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, 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 Sea Bed 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 paras 1 to 4.
- 6 The parties to the dispute shall comply promptly with any provisional measures prescribed under this article.

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 para 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

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PART XVI
GENERAL PROVISIONS

...

PART XVII
FINAL PROVISIONS

...

CHAPTER 12

AIR AND SPACE LAW

12.1 Air space

Up until the early part of this century the law relating to air space was not settled. Certain writers suggested that there should be a territorial air space above a state's territory with a similar regime to that of the territorial sea. Through the territorial air space there would be a right of innocent passage for foreign civilian aircraft and above it there would be freedom of navigation. Another school of thought advocated complete freedom of the air. The law came to be settled during the First World War and the customary law was codified in the Paris Convention on the Regulation of Aerial Navigation 1919. The approach adopted at Paris was that states should have complete and exclusive sovereignty over the air space above their land and territorial sea. Sovereignty was understood to extend upwards to an unlimited distance. As far as the air space above the high seas and other areas not subject to national jurisdiction was concerned it was accepted that there was complete freedom of navigation.

12.2 The Chicago Convention

The present regime concerning aerial navigation was developed at the 1944 Chicago Conference and is reflected in the conventions adopted there. The Chicago Convention on International Civil Aviation (the Chicago Convention) entered into force in January 1945.

CHICAGO CONVENTION ON INTERNATIONAL CIVIL AVIATION 1944¹

Article 1

The contracting states recognise that every state has complete and exclusive sovereignty over the air space above its territory.

Article 2

For the purposes of this Convention the territory of a state shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such state.

Article 3

- (a) This Convention shall be applicable only to civil aircraft, and shall not be applicable to state aircraft.
- (b) Aircraft used in military, customs and police services shall be deemed to be state aircraft.

1 UKTS 8 (1953) Cmd 8742; 15 UNTS 295 – entered into force in 1947.