本事業は日本財団の補助金の交付を
受けて実施したものである。

海外調査資料

《別　　冊》

平成９年３月

財団法人　海上保安協会

「海外調査資料の概要」

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A　カナダ

カナダでは、外務省及び沿岸警備隊を訪問し、外務省法政策課担当官及び沿岸警備隊環境政策課、司法省漁業政策課の各担当官から調査事項に関する調査を行った。

まず、カナダでは、国連海洋法条約について、政府として条約の批准に向けて、現在、国内法の整備を図っており、1996. 12. 18にカナダ海洋関係法（An Act respecting the Oceans of Canada）草案が議会に提出されたところである。（資料１）。しかし、条約批准に向けては、漁業、汚染その他いくつかの問題についての国内法の調整が必要であり、批准の見通しは必ずしも明確ではない段階にある。これは、同法案にある海洋政策の具体的な政策決定が議会において決定されていないことによる。

1　領海関係

(1)　「通航」の要件

「通航」の意味は、国連海洋法条約18条に示された内容によって明らかである。

ただ、外国船舶の領海における通航の要件に関する規定は、カナダ航行法（Canada Shipping Act of 1993）第660. 2条にみられる。しかし、この規定は、環境保護目的のために定めた規定であり、国連海洋法条約における通航の要件とは内容が異なる。

(2) 無害通航の要件

外国船舶の領海における無害でない通航の要件を国内法化していない。それは、無害通航の概念が国際法上確立しているので、一般に、国際法に反しない限りにおいて国内法を定める必要はないという理由に基づく。

ただ、国連海洋法条約第19条第２項に規定する行為については、将来、国内法において規定されることになるかもしれない。

2 接続水域関係

(1) 「接続水域」の設定

接続水域は、カナダ海洋関係法第10条において、通関上、衛生上、出入国管理上、財政上の分野での規制を行うこととしている。規定しているが、現段階では、いまだ法案に止まるので、接続水域は設定されていない。同様に、排他的経済水域についても、同法に定めることとしているが、現在は、200海里について漁業水域という形態で設定されている。

出入国管理上の取締りは、労働省所管の特別法により、密入国の取締りが行われている。現実の取締り手段は、Memorandum of Understanding に基づき、連邦警察、移民局、海軍、沿岸警備隊らが協力して行う。沿岸警備隊は、船舶の航行を任務とするので、警察権限は、上記の各警察機関がこれを行使し、沿岸警備隊としては不法入国を現認した場合、船舶の航行を差し止め（たとえば、書類の検査など)、その間に連邦警察などへ連絡して、右警察機関がこれを取り締まる。法理論上は、法令違反を現認した場合、現行犯逮捕は可能であるが、沿岸警備隊は、武器を所持していないので、実力行使は現実にはなしえない。

3 供託金（ボンド金）による早期釈放関係

(1) 外国船舶の漁業違反事犯に対する執行権限

1995年４月１日に政府機関の組織変更があり、漁業省から沿岸警備隊に漁業取締局が移管されることとなった。その結果、沿岸警備隊の船舶に漁業取締官が乗船して違法な漁業活動の取締りを行うこととなった。

(2) 外国船舶の海洋汚染事犯に対する執行権限

外国船舶の海洋汚染事犯に関する執行権限行使の根拠となる法令としては以下の4つがある（資料2参照）。

- Canada Shipping Act.
- Water Pollusion Act.
- Fishery Act.
- Environment Protection Act.

(3) 早期釈放制度の設定

Canada Shipping Act 第662条において、外国船舶の海洋汚染事犯について、供託金による早期釈放制度を定めている。

ボンドの性格は、刑事罰金、民事罰金というものと解されている。

海洋汚染の場合、入港国での扱い方として、刑事手続きへの出頭確保を目的として、沿岸警備隊は以下2つの措置を執る。

- 違反罰金の徴収手続
- 汚染した油の防除費用の賦課

判例で罰金額としては、75,000ドル、ボンドとして20,000ドルを言い渡したものが最高額であるという（資料2）。

ボンドの納付手続には、

- ボンドを裁判所に納付
- ボンド会社による納付（ボンド会社に一定額を納付することで代替納付される）
- 保証書の提出

がある。

1993年の統計によると、約4,500ドル平均のボンドが納められているという。

なお、年間約40件のボンドによる釈放が行われているとのことである。

一般に、刑事罰の代替という性格から、ボンドのほうが罰金より高額である。

B　アメリカ合衆国

アメリカ合衆国では、国務省において、国務省海洋政策課、商務省海洋環境調整課及び沿岸警備隊海洋国際法課の各担当官から調査事項についての調査を行った。

アメリカにおいて、1983年に大統領の海洋政策（資料４）が公表され、それにしたがった運用が実施されてきている（資料５）。

１　領海関係

(1)　「通航」の要件

1794年領海に関する法律が初めて制定された。

1988年レーガン大統領の宣言により12海里とされるまで３海里を領海としてきた。外国船舶の領海における通航に関する規定を国内法化していない。

(2)　無害通航の要件

外国船舶の領海における無害でない通航の要件を一般的に国内法化していないが、Coastal Water Safty Act において無害通航を定めている。

２　接続水域関係

(1)　「接続水域」の決定

接続水域制度は必ずしも国際的な実務運用として確立していないとの認識から接続水域を設定していない。

なお、1958年の領海及び接続水域に関する条約に基づき制定された法律では、接続水域と整合性を持つ法律がある。

1988年の宣言によって領海が３海里から12海里へと拡張されたが、それによって、それまでの国内法の領海の幅を広げるという措置は講じていない。それ故、各法律によって、３海里を領海とするものと12海里を領海とするものとが併存することとなっていて、主権行使の範囲に差異が生じている。たとえば、関税法や入国管理法は、1958年条約に基づき、領海３海里、以遠12海里までを接続水域とした法律となっている。なお、1996年４月に刑法（18

USC. 7）は、12海里を領海とすることとした。

入国管理に関しては、接続水域を超えたパトロールを行っている。

3　供託金（ボンド金）による早期釈放関係

(1) 外国船舶の海洋汚染事犯に対する執行権限

国内法として、Clean Water Act（33 USC 1321）と Act to Prevent Pollusion from Ship とがある。領海内3海里の油の排出の禁止を規定し、12海里まで沿岸警備隊による乗船、調査権限の行使が行われる。12海里以遠では、旗国の許可を前提とした調査しかできない。いずれも、MALPOL 議定書にしたがった実行が行われている。

(2) 早期釈放制度の設定

外国船舶の海洋汚染事犯について、供託金（ボンド金）による早期釈放制度については、Oil Pollusion Act 1990（46 USC 6101）による。漁業活動については、18 USC 1860 漁獲物・財産にボンドを納めれば早期に釈放することとなっている。

速やかなボンドによる釈放は、憲法第5適正手続の保障を受ける。また、拿捕・逮捕については、第4修正の令状主義の保障を受ける。漁業保存法では、船舶の没収を定めるが、没収もボンドを納めることによりこれを担保する。その額は裁判所が決定する。一応、船舶の全体の価額を想定して決めるのが運用である。この保存法上の没収は、許可条件違反を理由とするものである。

ボンドの納付方法は、現金の納付、保証書の提出が一般的である。

ボンドの額は、罰金として定められている額の最高額を言い渡すのが通常である。

3　そ の 他

(1) 海洋科学的調査（資料6）

沿岸規制法に基づくが、外国政府からの同意を求めることは要請していない。

資源については許可が必要である。

(2) 体制整備

国家安全保障委員会における関係省庁の会議において決定されるが、とくに条約との関連では具体的に決められているわけではない（資料７）。

付　記

調査日程

期間　1997.1.13～1.18

訪問先

カナダ

カナダ外務省　外務省法政策課　Andrew Jenks

司法省　漁業政策課　Simon Baker

交通法政策課　M. A. M. Gauthier

アメリカ合衆国

国務省海洋政策課　Maureen O'C. Walker

商務省海洋環境調整課　Patricia Kraniotis

沿岸警備隊海洋国際法課　Malcolm J. Williams, Jr

資料 1

Second Session, Thirty-fifth Parliament,
45 Elizabeth II, 1996

Deuxième session, trente-cinquième législature,
45 Elizabeth II, 1996

STATUTES OF CANADA 1996

LOIS DU CANADA (1996)

CHAPTER 31

CHAPITRE 31

An Act respecting the oceans of Canada

Loi concernant les océans du Canada

BILL C-26

ASSENTED TO 18th DECEMBER, 1996

PROJET DE LOI C-26

SANCTIONNÉ LE 18 DÉCEMBRE 1996

SUMMARY

Part I of this enactment recognizes Canada's jurisdiction over its ocean areas through the declaration of an exclusive economic zone and a contiguous zone in accordance with the *United Nations Convention on the Law of the Sea*. It also incorporates provisions of the *Canadian Laws Offshore Application Act* and of the *Territorial Sea and Fishing Zones Act*.

Part II provides for the development and implementation of a national Oceans Management Strategy based on the sustainable development and integrated management of oceans and coastal activities and resources.

Part III provides for consolidation and clarification of federal responsibilities for managing Canada's oceans.

SOMMAIRE

La partie I du texte vise à affirmer dans le droit interne du Canada les droits souverains que reconnaît à celui-ci, sur ses zones maritimes, la *Convention des Nations Unies sur le droit de la mer*. Ainsi, sont constituées la zone contiguë et la zone économique exclusive du Canada. La partie I du texte reprend l'ensemble des dispositions de la *Loi sur l'application extracôtière des lois canadiennes* et de la *Loi sur la mer territoriale et la zone de pêche*.

La partie II du texte prévoit l'élaboration et la mise en oeuvre d'une stratégie nationale de gestion des océans et des ressources marines fondée sur les principes de développement durable et de gestion intégrée des activités qui s'exercent dans les eaux côtières et marines.

La partie III du texte regroupe certaines attributions fédérales relatives aux océans bordant le Canada.

45 ELIZABETH II

CHAPTER 31

An Act respecting the oceans of Canada

[*Assented to 18th December, 1996*]

Preamble

WHEREAS Canada recognizes that the three oceans, the Arctic, the Pacific and the Atlantic, are the common heritage of all Canadians;

WHEREAS Parliament wishes to reaffirm Canada's role as a world leader in oceans and marine resource management;

WHEREAS Parliament wishes to affirm in Canadian domestic law Canada's sovereign rights, jurisdiction and responsibilities in the exclusive economic zone of Canada;

WHEREAS Canada promotes the understanding of oceans, ocean processes, marine resources and marine ecosystems to foster the sustainable development of the oceans and their resources;

WHEREAS Canada holds that conservation, based on an ecosystem approach, is of fundamental importance to maintaining biological diversity and productivity in the marine environment;

WHEREAS Canada promotes the wide application of the precautionary approach to the conservation, management and exploitation of marine resources in order to protect these resources and preserve the marine environment;

WHEREAS Canada recognizes that the oceans and their resources offer significant opportunities for economic diversification and the generation of wealth for the benefit of all Canadians, and in particular for coastal communities;

WHEREAS Canada promotes the integrated management of oceans and marine resources;

AND WHEREAS the Minister of Fisheries and Oceans, in collaboration with other ministers, boards and agencies of the Government of Canada, with provincial and territorial gov-

45 ELIZABETH II

CHAPITRE 31

Loi concernant les océans du Canada

[*Sanctionnée le 18 décembre 1996*]

Préambule

Attendu :

que le Canada reconnaît que les trois océans qui le bordent, l'Arctique, le Pacifique et l'Atlantique, font partie du patrimoine de tous les Canadiens;

que le Parlement désire réaffirmer le rôle du Canada en tant que chef de file mondial en matière de gestion des océans et des ressources marines;

que le Parlement désire affirmer, dans les lois internes, les droits souverains du Canada sur sa zone économique exclusive et les responsabilités qu'il compte assumer à cet égard;

que le Canada est déterminé à promouvoir la connaissance des océans, des phénomènes océaniques ainsi que des ressources et des écosystèmes marins, en vue d'assurer la préservation des océans et la durabilité de leurs ressources;

que le Canada estime que la conservation, selon la méthode des écosystèmes, présente une importance fondamentale pour la sauvegarde de la diversité biologique et de la productivité du milieu marin;

que le Canada encourage l'application du principe de la prévention relativement à la conservation, à la gestion et à l'exploitation des ressources marines afin de protéger ces ressources et de préserver l'environnement marin;

que le Canada reconnaît que les océans et les ressources marines offrent des possibilités importantes de diversification et de croissance économiques au profit de tous les Canadiens et, en particulier, des collectivités côtières;

que le Canada est déterminé à promouvoir la gestion intégrée des océans et des ressources marines;

ernments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, is encouraging the development and implementation of a national strategy for the management of estuarine, coastal and marine ecosystems;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

que le ministre des Pêches et des Océans, en collaboration avec d'autres ministres et organismes fédéraux, les gouvernements provinciaux et territoriaux et les organisations autochtones, les collectivités côtières et les autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales, encourage l'élaboration et la mise en oeuvre d'une stratégie nationale de gestion des écosystèmes estuariens, côtiers et marins,

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

SHORT TITLE

hort title

1. This Act may be cited as the *Oceans Act*.

TITRE ABRÉGÉ

1. *Loi sur les océans*.

Titre abrégé

INTERPRETATION

efinitions

2. In this Act,

DÉFINITIONS ET INTERPRÉTATION

2. Les définitions qui suivent s'appliquent à la présente loi.

Définitions

artificial land" *île rtificielle »*

"artificial island" means any man-made extension of the seabed or a seabed feature, whether or not the extension breaks the surface of the superjacent waters;

Department" *ministère »*

"Department" means the Department of Fisheries and Oceans;

federal ws" *droit »*

"federal laws" includes Acts of Parliament, regulations as defined in section 2 of the *Interpretation Act* and any other rules of law within the jurisdiction of Parliament, but does not include ordinances within the meaning of the *Northwest Territories Act* or the *Yukon Act* or, after section 3 of the *Nunavut Act* comes into force, laws made by the Legislature for Nunavut or continued by section 29 of that Act;

law" *droit »*

"law", in respect of a province, includes a law or rule of law from time to time in force in the province, other than federal laws, and the provisions of any instrument having effect under any such law;

marine stallation or tructure" *ouvrages en ier »*

"marine installation or structure" includes

« droit » Au sens objectif :

« droit » *"law" "federal laws"*

a) s'agissant du droit fédéral, les lois fédérales et les règlements au sens du paragraphe 2(1) de la *Loi d'interprétation*, ainsi que les autres règles de droit qui relèvent de la compétence du Parlement. Sont toutefois exclues de la présente définition les ordonnances au sens de la *Loi sur les Territoires du Nord-Ouest* ou de la *Loi sur le Yukon*, ainsi que, à compter de l'entrée en vigueur de l'article 3 de la *Loi sur le Nunavut*, les lois de la législature du Nunavut et les règles de droit en vigueur dans ce territoire par application de l'article 29 de cette loi;

b) s'agissant du droit d'une province, les lois de celle-ci et les textes d'application en vigueur sous le régime de ces lois, ainsi que les autres règles de droit relevant de la compétence de la province et en vigueur dans celle-ci.

« île artificielle » Toute adjonction d'origine humaine aux fonds marins ou à un élément de ces fonds, émergée ou immergée.

« île artificielle » *"artificial island"*

(*a*) any ship and any anchor, anchor cable or rig pad used in connection therewith,

(*b*) any offshore drilling unit, production platform, subsea installation, pumping station, living accommodation, storage structure, loading or landing platform, dredge, floating crane, pipelaying or other barge or pipeline and any anchor, anchor cable or rig pad used in connection therewith, and

(*c*) any other work or work within a class of works prescribed pursuant to paragraph 26(1)(*a*);

"Minister" « *ministre* »

"Minister" means the Minister of Fisheries and Oceans;

"ship" « *navire* »

"ship" includes any description of vessel, boat or craft designed, used or capable of being used solely or partly for marine navigation without regard to method or lack of propulsion.

« ministère » Le ministère des Pêches et des Océans. « ministère » "*Department*"

« ministre » Le ministre des Pêches et des Océans. « ministre » "*Minister*"

« navire » Tout genre de navire, bateau, embarcation ou bâtiment conçu, utilisé ou utilisable, exclusivement ou non, pour la navigation maritime, autopropulsé ou non et indépendamment de son mode de propulsion. « navire » "*ship*"

« ouvrages en mer » Sont compris parmi les ouvrages en mer : « ouvrages en mer » "*marine installation or structure*"

a) les navires; ainsi que les ancres, câbles d'ancrage et assises de sonde utilisés à leur égard;

b) les unités de forage en mer, les stations de pompage, les plates-formes de chargement, de production ou d'atterrissage, les installations sous-marines, les unités de logement ou d'entreposage, les dragues, les grues flottantes, les barges, les unités d'installation de canalisations et les canalisations, ainsi que les ancres, câbles d'ancrage et assises de sonde utilisés à leur égard;

c) les autres ouvrages désignés — ou qui font partie d'une catégorie désignée — sous le régime de l'alinéa 26(1)*a*).

Saving

2.1 For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*.

2.1 Il demeure entendu que la présente loi ne porte pas atteinte aux droits existants — ancestraux ou issus de traités — des peuples autochtones du Canada visés à l'article 35 de la *Loi constitutionnelle de 1982*. Droits des peuples autochtones

HER MAJESTY

SA MAJESTÉ

Her Majesty

3. This Act is binding on Her Majesty in right of Canada or a province.

3. La présente loi lie Sa Majesté du chef du Canada ou d'une province. Obligation de Sa Majesté

PART I

CANADA'S MARITIME ZONES

Territorial Sea and Contiguous Zone

Territorial sea of Canada

4. The territorial sea of Canada consists of a belt of sea that has as its inner limit the baselines described in section 5 and as its outer limit

(*a*) subject to paragraph (*b*), the line every point of which is at a distance of 12 nautical miles from the nearest point of the baselines; or

(*b*) in respect of the portions of the territorial sea of Canada for which geographical coordinates of points have been prescribed pursuant to subparagraph 25(*a*)(ii), lines determined from the geographical coordinates of points so prescribed.

Determination of the baselines

5. (1) Subject to subsections (2) and (3), the baseline is the low-water line along the coast or on a low-tide elevation that is situated wholly or partly at a distance not exceeding the breadth of the territorial sea of Canada from the mainland or an island.

Geographical coordinates of points

(2) In respect of any area for which geographical coordinates of points have been prescribed pursuant to subparagraph 25(*a*)(i) and subject to any exceptions in the regulations for

(*a*) the use of the low-water line along the coast between given points, and

(*b*) the use of the low-water lines of low-tide elevations that are situated wholly or partly at a distance not exceeding the breadth of the territorial sea of Canada from the mainland or an island,

the baselines are straight lines interpreted as geodesics joining the consecutive geographical coordinates of points so prescribed.

Baselines where historic title

(3) In respect of any area not referred to in subsection (2), the baselines are the outer limits of any area, other than the territorial sea of Canada, over which Canada has a historic or other title of sovereignty.

Low-tide elevations

(4) For the purposes of this section, a low-tide elevation is a naturally formed area of land that is surrounded by and above water at low tide but submerged at high tide.

PARTIE I

ZONES MARITIMES DU CANADA

Mer territoriale et zone contiguë

Mer territoriale du Canada

4. La mer territoriale du Canada est la zone maritime comprise entre la ligne de base déterminée selon l'article 5 et :

a) soit la ligne dont chaque point est à une distance de 12 milles marins du point le plus proche de la ligne de base;

b) soit, pour toute partie de la mer territoriale ayant fait l'objet d'une liste de coordonnées géographiques de points établie sous le régime du sous-alinéa 25*a*)(ii), les géodésiques reliant ces points.

Détermination de la ligne de base

5. (1) Sous réserve des paragraphes (2) et (3), la ligne de base est la laisse de basse mer soit du littoral, soit des hauts-fonds découvrants situés, en tout ou en partie, à une distance de la côte ou d'une île qui ne dépasse pas la largeur de la mer territoriale.

Coordonnées géographiques de points

(2) Dans les secteurs ayant fait l'objet d'une liste de coordonnées géographiques de points établie sous le régime du sous-alinéa 25*a*)(i), la ligne de base est constituée des géodésiques joignant les différents points énumérés sur la liste, sous réserve des exceptions de celle-ci quant à la prise en compte de la laisse de basse mer soit du littoral, soit des hauts-fonds découvrants situés, en tout ou en partie, à une distance de la côte qui ne dépasse pas la largeur de la mer territoriale.

Ligne de base : souveraineté historique

(3) Dans le cas d'un espace maritime non compris dans la mer territoriale et non visé au paragraphe (2) sur lequel le Canada a un titre de souveraineté historique ou autre, la ligne de base est la limite extérieure de cet espace.

Définition de « hauts-fonds découvrants »

(4) Pour l'application du présent article, les hauts-fonds découvrants sont des élévations naturelles submergées à marée haute et découvertes à marée basse.

Internal waters of Canada

6. The internal waters of Canada consist of the waters on the landward side of the baselines of the territorial sea of Canada.

Eaux intérieures du Canada

6. Les eaux intérieures du Canada sont les eaux situées en deçà de la ligne de base de la mer territoriale.

Part of Canada

7. For greater certainty, the internal waters of Canada and the territorial sea of Canada form part of Canada.

Territoire canadien

7. Il est entendu que les eaux intérieures et la mer territoriale du Canada font partie du territoire de celui-ci.

Rights of Her Majesty

8. (1) For greater certainty, in any area of the sea not within a province, the seabed and subsoil below the internal waters of Canada and the territorial sea of Canada are vested in Her Majesty in right of Canada.

Droits de Sa Majesté

8. (1) Il est entendu que, dans le cas des espaces maritimes non compris dans le territoire d'une province, le fond et le sous-sol des eaux intérieures et de la mer territoriale appartiennent à Sa Majesté du chef du Canada.

Saving

(2) Nothing in this section abrogates or derogates from any legal right or interest held before February 4, 1991.

Réserve

(2) Le présent article n'a pas pour effet de porter atteinte aux droits acquis avant le 4 février 1991.

Application of provincial law

9. (1) Subject to this section and to any other Act of Parliament, the laws of a province apply in any area of the sea

(*a*) that forms part of the internal waters of Canada or the territorial sea of Canada;

(*b*) that is not within any province; and

(*c*) that is prescribed by the regulations.

Application du droit provincial

9. (1) Sous réserve des autres dispositions du présent article et de toute autre loi fédérale, le droit d'une province côtière s'applique aux espaces maritimes extracôtiers faisant partie des eaux intérieures ou de la mer territoriale qui ne sont compris dans le territoire d'aucune province et qui sont désignés par règlement.

Limitation

(2) Subject to any regulations made pursuant to paragraph 26(1)(*d*), subsection (1) does not apply in respect of any provision of a law of a province that

(*a*) imposes a tax or royalty; or

(*b*) relates to mineral or other non-living natural resources.

Restriction

(2) Sous réserve des règlements pris en vertu de l'alinéa 26(1)*d*), le paragraphe (1) ne s'applique pas aux règles du droit provincial qui, selon le cas :

a) imposent une taxe ou des redevances;

b) traitent des ressources minérales ou autres ressources naturelles non biologiques.

Interpretation

(3) For the purposes of this section, the laws of a province shall be applied as if the area of the sea in which those laws apply under this section were within the territory of that province.

Interprétation

(3) Dans les cas visés par le présent article, le droit provincial s'applique comme si l'espace visé était situé à l'intérieur de la province.

Sums due to province

(4) Any sum due under a law of a province that applies in an area of the sea under this section belongs to Her Majesty in right of the province.

Remise à la province

(4) Les sommes payables au titre d'une règle du droit provincial qui s'applique à l'espace visé au présent article appartiennent à Sa Majesté du chef de la province.

Limitation

(5) For greater certainty, this section shall not be interpreted as providing a basis for any claim, by or on behalf of a province, in respect of any interest in or legislative jurisdiction over any area of the sea in which a law of a province applies under this section or the living or non-living resources of that area, or as limiting the application of any federal laws.

Restriction

(5) Il demeure entendu que ni les provinces, ni quiconque en leur nom, ne peuvent se fonder sur le présent article pour prétendre à des droits ou à une compétence législative sur les espaces extracôtiers visés ou sur leurs ressources biologiques ou non biologiques; en outre, le présent article n'a pas pour effet de limiter l'application du droit fédéral.

'ontiguous one of 'anada

10. The contiguous zone of Canada consists of an area of the sea that has as its inner limit the outer limit of the territorial sea of Canada and as its outer limit the line every point of which is at a distance of 24 nautical miles from the nearest point of the baselines of the territorial sea of Canada, but does not include an area of the sea that forms part of the territorial sea of another state or in which another state has sovereign rights.

Zone contiguë du Canada

10. La zone contiguë du Canada est la zone maritime comprise entre la limite extérieure de la mer territoriale et la ligne dont chaque point est à une distance de 24 milles marins du point le plus proche de la ligne de base de la mer territoriale, à l'exclusion de tout espace maritime faisant partie de la mer territoriale d'un autre État, ou assujetti aux droits souverains d'un autre État.

'revention in ontiguous one of ıfringement f federal ıws

11. A person who is responsible for the enforcement of a federal law that is a customs, fiscal, immigration or sanitary law and who has reasonable grounds to believe that a person in the contiguous zone of Canada would, if that person were to enter Canada, commit an offence under that law may, subject to Canada's international obligations, prevent the entry of that person into Canada or the commission of the offence and, for greater certainty, section 25 of the *Criminal Code* applies in respect of the exercise by a person of any powers under this section.

Prévention des infractions

11. Sous réserve des obligations internationales du Canada, tout agent chargé de l'application d'une règle du droit fédéral touchant les douanes, la fiscalité, l'immigration ou l'hygiène publique peut, s'il a des motifs raisonnables de croire qu'une personne se trouvant dans la zone contiguë du Canada serait, si elle entrait au Canada, en situation d'infraction à une telle règle de droit, empêcher cette personne d'entrer au Canada ou prévenir la perpétration de l'infraction. Il est entendu que l'article 25 du *Code criminel* s'applique à toute intervention pratiquée en vertu du présent article.

nforcement contiguous one of ederal laws

12. (1) Where there are reasonable grounds to believe that a person has committed an offence in Canada in respect of a federal law that is a customs, fiscal, immigration or sanitary law, every power of arrest, entry, search or seizure or other power that could be exercised in Canada in respect of that offence may also be exercised in the contiguous zone of Canada.

Pouvoirs accessoires

12. (1) Lorsqu'il existe des motifs raisonnables de croire qu'une infraction à une règle du droit fédéral touchant les douanes, la fiscalité, l'immigration ou l'hygiène publique a été commise au Canada, tous les pouvoirs — notamment ceux d'arrestation, d'accès à des lieux, de perquisition, de fouille et de saisie — qui peuvent être exercés au Canada relativement à une telle infraction peuvent l'être également dans la zone contiguë.

ıitation

(2) A power of arrest referred to in subsection (1) shall not be exercised in the contiguous zone of Canada on board any ship registered outside Canada without the consent of the Attorney General of Canada.

Réserve

(2) L'exercice du pouvoir d'arrestation dans la zone contiguë, à bord d'un navire immatriculé à l'étranger, est subordonné au consentement du procureur général du Canada.

Exclusive Economic Zone

Zone économique exclusive

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13. (1) The exclusive economic zone of Canada consists of an area of the sea beyond and adjacent to the territorial sea of Canada that has as its inner limit the outer limit of the territorial sea of Canada and as its outer limit

(*a*) subject to paragraph (*b*), the line every point of which is at a distance of 200 nautical miles from the nearest point of the baselines of the territorial sea of Canada; or

Zone économique exclusive du Canada

13. (1) La zone économique exclusive est la zone maritime adjacente à la mer territoriale qui est comprise entre la limite extérieure de celle-ci et :

a) soit la ligne dont chaque point est à 200 milles marins du point le plus proche de la ligne de base de la mer territoriale;

(*b*) in respect of a portion of the exclusive economic zone of Canada for which geographical coordinates of points have been prescribed pursuant to subparagraph 25(*a*)(iii), lines determined from the geographical coordinates of points so prescribed.

b) soit, pour toute partie de la zone économique exclusive ayant fait l'objet d'une liste de coordonnées géographiques de points établie sous le régime du sous-alinéa 25*a*)(iii), les géodésiques reliant ces points.

Determination of the outer limit of the exclusive economic zone of Canada

(2) For greater certainty, paragraph (1)(*a*) applies regardless of whether regulations are made pursuant to subparagraph 25(*a*)(iv) prescribing geographical coordinates of points from which the outer limit of the exclusive economic zone of Canada may be determined.

Précision

(2) Il est entendu que l'absence de règlement d'application du sous-alinéa 25*a*)(iv) n'a pas pour effet de restreindre la portée des droits que peut exercer le Canada au titre de l'alinéa (1)*a*).

Sovereign rights and jurisdiction of Canada

14. Canada has

(*a*) sovereign rights in the exclusive economic zone of Canada 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 exclusive economic zone of Canada, such as the production of energy from the water, currents and winds;

(*b*) jurisdiction in the exclusive economic zone of Canada with regard to

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

(ii) marine scientific research, and

(iii) the protection and preservation of the marine environment; and

(*c*) other rights and duties in the exclusive economic zone of Canada provided for under international law.

Droits souverains du Canada

14. Le Canada a, sur sa zone économique exclusive :

a) des droits souverains quant à l'exploration et à l'exploitation, la conservation et la gestion des ressources naturelles — biologiques et non biologiques — de celle-ci, des fonds marins, de leur sous-sol et des eaux surjacentes, y compris toute activité liée à l'exploration et à l'exploitation de la zone à des fins économiques, telle la production d'énergie à partir de l'eau, des courants et des vents;

b) compétence pour la mise en place et l'utilisation d'îles artificielles et d'ouvrages en mer, à la recherche scientifique marine, ainsi qu'à la protection et la préservation du milieu marin;

c) les autres droits et obligations prévus par le droit international.

Rights of Her Majesty

15. (1) For greater certainty, any rights of Canada in the seabed and subsoil of the exclusive economic zone of Canada and their resources are vested in Her Majesty in right of Canada.

Droits de Sa Majesté

15. (1) Il est entendu que les droits du Canada sur le fond et le sous-sol de sa zone économique exclusive, ainsi que sur les ressources qui s'y trouvent, appartiennent à Sa Majesté du chef du Canada.

Saving

(2) Nothing in this section abrogates or derogates from any legal right or interest held before February 4, 1991.

Réserve

(2) Le présent article n'a pas pour effet de porter atteinte aux droits acquis avant le 4 février 1991.

shing zones Canada

16. The fishing zones of Canada consist of areas of the sea adjacent to the coast of Canada that are prescribed in the regulations.

Zones de pêche du Canada

16. Les zones de pêche du Canada sont les zones maritimes adjacentes à la côte canadienne qui sont désignées comme telles par règlement.

Continental Shelf

Plateau continental

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17. (1) The continental shelf of Canada is the seabed and subsoil of the submarine areas, including those of the exclusive economic zone of Canada, that extend beyond the territorial sea of Canada throughout the natural prolongation of the land territory of Canada

(*a*) subject to paragraphs (*b*) and (*c*), to the outer edge of the continental margin, determined in the manner under international law that results in the maximum extent of the continental shelf of Canada, the outer edge of the continental margin being the submerged prolongation of the land mass of Canada consisting of the seabed and subsoil of the shelf, the slope and the rise, but not including the deep ocean floor with its oceanic ridges or its subsoil;

(*b*) to a distance of 200 nautical miles from the baselines of the territorial sea of Canada where the outer edge of the continental margin does not extend up to that distance; or

(*c*) in respect of a portion of the continental shelf of Canada for which geographical coordinates of points have been prescribed pursuant to subparagraph 25(*a*)(iii), to lines determined from the geographical coordinates of points so prescribed.

Plateau continental du Canada

17. (1) Le plateau continental du Canada est constitué des fonds marins et de leur sous-sol — y compris ceux de la zone économique exclusive — qui s'étendent, au-delà de la mer territoriale, sur tout le prolongement naturel du territoire terrestre du Canada :

a) soit jusqu'au rebord externe de la marge continentale — la limite la plus éloignée que permet le droit international étant à retenir —, c'est-à-dire les fonds marins correspondant au plateau, au talus et au glacis, ainsi que leur sous-sol, qui constituent le prolongement immergé de la masse terrestre du Canada, à l'exclusion, toutefois, des grands fonds des océans, de leurs dorsales océaniques et de leur sous-sol;

b) soit jusqu'à 200 milles marins de la ligne de base de la mer territoriale, là où ce rebord se trouve à une distance inférieure;

c) soit, pour toute partie du plateau continental ayant fait l'objet d'une liste de coordonnées géographiques de points établie sous le régime du sous-alinéa 25*a*)(iii), jusqu'à la ligne constituée des géodésiques reliant ces points.

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(2) For greater certainty, paragraphs (1)(*a*) and (*b*) apply regardless of whether regulations are made pursuant to subparagraph 25(*a*)(iv) prescribing geographical coordinates of points from which the outer edge of the continental margin or other outer limit of the continental shelf of Canada may be determined.

Précision

(2) Il est entendu que l'absence de règlement d'application du sous-alinéa 25*a*)(iv) n'a pas pour effet de restreindre la portée des droits que peut exercer le Canada au titre des alinéas (1)*a*) et *b*).

vereign hts of nada

18. Canada has sovereign rights over the continental shelf of Canada for the purpose of exploring it and exploiting the mineral and other non-living natural resources of the seabed and subsoil of the continental shelf of

Droits souverains du Canada

18. Les droits souverains du Canada sur son plateau continental s'étendent à l'exploration de celui-ci et à l'exploitation de ses ressources minérales et autres ressources naturelles non biologiques, ainsi que des organismes vivants

Canada, together with living organisms belonging to sedentary species, that is to say, organisms that, at the harvestable stage, either are immobile on or under the seabed of the continental shelf of Canada or are unable to move except in constant physical contact with the seabed or the subsoil of the continental shelf of Canada.

qui appartiennent aux espèces sédentaires, c'est-à-dire les organismes qui, au stade où ils peuvent être pêchés, sont soit immobiles sur le fond ou au-dessous du fond, soit incapables de se déplacer autrement qu'en restant constamment en contact avec le fond ou le sous-sol.

Rights of Her Majesty

19. (1) For greater certainty, any rights of Canada in the continental shelf of Canada are vested in Her Majesty in right of Canada.

Droits de Sa Majesté

19. (1) Il est entendu que les droits du Canada sur son plateau continental appartiennent à Sa Majesté du chef du Canada.

Saving

(2) Nothing in this section abrogates or derogates from any legal right or interest held before February 4, 1991.

Réserve

(2) Le présent article n'a pas pour effet de porter atteinte aux droits acquis avant le 4 février 1991.

Application of federal laws — continental shelf installations

20. (1) Subject to any regulations made pursuant to paragraph 26(1)(*j*) or (*k*), federal laws apply

(*a*) on or under any marine installation or structure from the time it is attached or anchored to the continental shelf of Canada in connection with the exploration of that shelf or the exploitation of its mineral or other non-living resources until the marine installation or structure is removed from the waters above the continental shelf of Canada;

(*b*) on or under any artificial island constructed, erected or placed on the continental shelf of Canada; and

(*c*) within such safety zone surrounding any marine installation or structure or artificial island referred to in paragraph (*a*) or (*b*) as is determined by or pursuant to the regulations.

Application du droit fédéral

20. (1) Sous réserve des règlements d'application des alinéas 26(1)*j*) ou *k*), le droit fédéral s'applique :

a) aux ouvrages en mer et sous ceux-ci, depuis le moment de leur fixation au plateau continental ou à son sous-sol, à l'occasion de l'exploration de celui-ci ou de l'exploitation de ses ressources minérales ou autres ressources naturelles non biologiques, jusqu'à ce qu'ils quittent les eaux surjacentes;

b) aux îles artificielles construites ou mises en place sur le plateau continental, ou sous celles-ci;

c) à l'intérieur de la zone de sécurité située autour des ouvrages et des îles mentionnés aux alinéas *a*) et *b*), et délimitée conformément aux règlements.

Interpretation

(2) For the purposes of subsection (1), federal laws shall be applied

(*a*) as if the places referred to in that subsection formed part of the territory of Canada;

(*b*) notwithstanding that by their terms their application is limited to Canada; and

(*c*) in a manner that is consistent with the rights and freedoms of other states under international law and, in particular, with the rights and freedoms of other states in relation to navigation and overflight.

Interprétation

(2) Pour l'application du paragraphe (1), les règles du droit fédéral s'appliquent :

a) comme si les lieux visés faisaient partie du territoire du Canada;

b) même si, selon leurs propres termes, elles ne s'appliquent qu'au Canada;

c) d'une façon compatible avec les droits et libertés que le droit international reconnaît aux autres États, notamment en matière de navigation et de survol.

Application of provincial law

21. (1) Subject to this section and to any other Act of Parliament, the laws of a province apply to the same extent as federal laws apply pursuant to section 20 in any area of the sea

(*a*) that forms part of the exclusive economic zone of Canada or is above the continental shelf of Canada;

(*b*) that is not within any province; and

(*c*) that is prescribed by the regulations.

Application du droit provincial

21. (1) Sous réserve des autres dispositions du présent article et de toute autre loi fédérale, et dans la même mesure que le droit fédéral s'applique en vertu de l'article 20, le droit d'une province côtière s'applique à l'espace maritime extracôtier faisant partie de la zone économique exclusive ou situé au-dessus du plateau continental qui n'est compris dans le territoire d'aucune province et qui est désigné par règlement.

Limitation

(2) Subject to any regulations made pursuant to paragraph 26(1)(*d*), subsection (1) does not apply in respect of any provision of a law of a province that

(*a*) imposes a tax or royalty; or

(*b*) relates to mineral or other non-living natural resources.

Restriction

(2) Sous réserve des règlements pris en vertu de l'alinéa 26(1)*d*), le paragraphe (1) ne s'applique pas aux règles du droit provincial qui, selon le cas :

a) imposent une taxe ou des redevances;

b) traitent des ressources minérales ou autres ressources naturelles non biologiques.

Interpretation

(3) For the purposes of this section, the laws of a province shall be applied as if the area of the sea in which those laws apply under this section were within the territory of that province.

Interprétation

(3) Dans les cas visés par le présent article, le droit provincial s'applique comme si l'espace visé était situé à l'intérieur de la province.

Sums due to province

(4) Any sum due under a law of a province that applies in an area of the sea under this section belongs to Her Majesty in right of the province.

Remise à la province

(4) Les sommes payables au titre d'une règle du droit provincial qui s'applique à l'espace visé au présent article appartiennent à Sa Majesté du chef de la province.

Limitation

(5) For greater certainty, this section shall not be interpreted as providing a basis for any claim, by or on behalf of a province, in respect of any interest in or legislative jurisdiction over any area of the sea in which a law of a province applies under this section or the living or non-living resources of that area, or as limiting the application of any federal laws.

Restriction

(5) Il demeure entendu que ni les provinces, ni quiconque en leur nom, ne peuvent se fonder sur le présent article pour prétendre à des droits ou à une compétence législative sur les espaces extracôtiers visés ou sur leurs ressources biologiques ou non biologiques; en outre, le présent article n'a pas pour effet de limiter l'application du droit fédéral.

Court Jurisdiction

Compétence juridictionnelle

Jurisdiction extended

22. (1) Subject to subsection (4) and to any regulations made pursuant to paragraph 26(1)(*h*), a court that would have jurisdiction in respect of any matter had the matter arisen in a province has jurisdiction in respect of any such matter involving a federal law that applies pursuant to this Act to the extent that the matter arises in whole or in part in any area of the sea that is not within any province and

(*a*) that area of the sea is nearer to the coast of that province than to the coast of any other province; or

Compétence extraterritoriale : droit fédéral

22. (1) Sous réserve du paragraphe (4) et des règlements d'application de l'alinéa 26(1)*h*), l'affaire mettant en jeu une règle du droit fédéral et survenue, en tout ou en partie, dans un espace maritime extracôtier qui n'est compris dans le territoire d'aucune province et où s'applique le droit fédéral en vertu de la présente loi ressortit aux tribunaux ayant compétence dans la province côtière la plus proche ou celle désignée par règlement, dans la mesure où ceux-ci auraient compétence si l'affaire était survenue dans cette province.

(*b*) that province is prescribed by the regulations.

Jurisdiction extended — provincial laws

(2) Subject to any regulations made pursuant to paragraph 26(1)(*h*), a court that would have jurisdiction in respect of any matter had the matter arisen in a province has jurisdiction in respect of any such matter involving a law of the province that applies pursuant to this Act to the extent that the matter arises in whole or in part in any area of the sea to which the law of that province applies pursuant to this Act.

Compétence extraterritoriale : droit provincial

(2) Sous réserve des règlements d'application de l'alinéa 26(1)*h*), l'affaire mettant en jeu une règle du droit d'une province et survenue, en tout ou en partie, dans un espace maritime extracôtier auquel s'applique le droit de cette province en vertu de la présente loi ressortit aux tribunaux ayant compétence dans la province, dans la mesure où ils auraient compétence si l'affaire était survenue dans celle-ci.

Orders and powers

(3) A court referred to in subsection (1) or (2) may make any order or exercise any power it considers necessary in respect of any matter referred to in that subsection.

Exercice des pouvoirs

(3) Les tribunaux visés aux paragraphes (1) ou (2) peuvent, dans le cadre des affaires dont ils sont saisis, exercer tous leurs pouvoirs selon qu'ils le jugent nécessaire.

Criminal offences

(4) The jurisdiction and powers of courts with respect to offences under any federal law are determined pursuant to sections 477.3, 481.1 and 481.2 of the *Criminal Code*.

Infractions au droit fédéral

(4) Leur compétence à l'égard des infractions au droit fédéral est déterminée conformément aux articles 477.3, 481.1 et 481.2 du *Code criminel*.

Saving

(5) Nothing in this section limits the jurisdiction that a court may exercise apart from this Act.

Réserve

(5) Le présent article n'a pas pour effet de restreindre la compétence qu'ils exercent par ailleurs.

Definition of "court"

(6) In this section, "court" includes a judge of a court and a justice of the peace.

Définition de « tribunaux »

(6) Pour l'application du présent article, sont assimilés aux tribunaux les juges qui y siègent et les juges de paix.

Miscellaneous Provisions

Dispositions diverses

Certificate — Minister of Foreign Affairs

23. (1) In any legal or other proceedings, a certificate issued by or under the authority of the Minister of Foreign Affairs containing a statement that any geographic location specified in the certificate was, at any time material to the proceedings,

(*a*) in the internal waters of Canada,

(*b*) in the territorial sea of Canada,

(*c*) in the contiguous zone of Canada,

(*d*) in the exclusive economic zone of Canada, or

(*e*) in or above the continental shelf of Canada

is conclusive proof of the truth of the statement without proof of the signature or official character of the person appearing to have issued the certificate.

Certificat du ministre des Affaires étrangères

23. (1) Dans toute procédure, vaut preuve concluante des renseignements qui y sont énoncés le certificat délivré sous l'autorité du ministre des Affaires étrangères et attestant qu'un lieu se trouvait, à l'époque en cause :

a) dans les eaux intérieures;

b) dans la mer territoriale;

c) dans la zone contiguë;

d) dans la zone économique exclusive;

e) sur le plateau continental ou dans les eaux surjacentes.

Le certificat est recevable en preuve sans qu'il soit nécessaire de prouver l'authenticité de la signature ou la qualité officielle du signataire.

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(2) In any legal or other proceedings, a certificate issued by or under the authority of the Minister containing a statement that any geographic location specified in the certificate was, at any time material to the proceedings, within an area of the sea in which a law of the province named in the certificate applies under section 9 or 21 is conclusive proof of the truth of the statement without proof of the signature or official character of the person appearing to have issued the certificate.

(2) Dans toute procédure, vaut preuve concluante des renseignements qui y sont énoncés le certificat délivré sous l'autorité du ministre et attestant qu'un lieu se trouvait, à l'époque en cause, dans un espace maritime extracôtier où le droit de la province désignée dans le certificat s'appliquait en vertu des articles 9 ou 21. Le certificat est recevable en preuve sans qu'il soit nécessaire de prouver l'authenticité de la signature ou la qualité officielle du signataire.

Certificat du ministre des Pêches et des Océans

ertificate annot be ompelled

(3) A certificate referred to in subsection (1) or (2) is admissible in evidence in proceedings referred to in that subsection, but its production cannot be compelled.

(3) La production des certificats visés aux paragraphes (1) et (2) n'est pas susceptible de contrainte.

Non-exigibilité des certificats

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24. Nothing in this Part limits the operation that any Act, rule of law or instrument has apart from this Part.

24. Les dispositions de la présente partie n'ont pas pour effet de limiter l'applicabilité que des lois, des règles de droit ou des actes juridiques peuvent avoir par ailleurs.

Réserve

Regulations

Règlements

ecommendation — linister of oreign ffairs

25. The Governor in Council may, on the recommendation of the Minister of Foreign Affairs, make regulations

25. Le gouverneur en conseil peut, sur la recommandation du ministre des Affaires étrangères, prendre des règlements :

Recommandation du ministre des Affaires étrangères

(*a*) prescribing geographical coordinates of points from which

a) pour fixer les coordonnées géographiques de points permettant de déterminer :

(i) baselines may be determined under subsection 5(2) as straight lines interpreted as geodesics,

(i) les géodésiques constituant, aux termes du paragraphe 5(2), la ligne de base de la mer territoriale,

(ii) in respect of a portion of the territorial sea of Canada prescribed in the regulations, an outer limit line may be determined, where, in the opinion of the Governor in Council, a portion of the territorial sea of Canada determined in accordance with paragraph 4(*a*) would conflict with the territorial sea of another state or other area of the sea in which another state has sovereign rights or would be unreasonably close to the coast of another state,

(ii) la limite extérieure de la mer territoriale dans les secteurs désignés par règlement où il estime que l'application de l'alinéa 4*a*) entraînerait un empiétement sur la mer territoriale d'un autre État ou sur un espace maritime assujetti aux droits souverains d'un autre État, ou placerait cette limite à un endroit trop proche du littoral d'un autre État,

(iii) in respect of a portion of the exclusive economic zone of Canada or the continental shelf of Canada prescribed in the regulations, an outer limit line may be determined, where, in the

(iii) la limite extérieure de la zone économique exclusive ou du plateau continental dans les secteurs désignés par règlement où il estime que l'application des alinéas 13(1)*a*) ou 17(1)*a*) ou *b*) entraînerait un empiétement sur la mer territoriale d'un autre État ou sur un espace maritime assujetti aux droits sou-

opinion of the Governor in Council, a portion of the exclusive economic zone of Canada or the continental shelf of Canada determined in accordance with paragraph 13(1)(*a*) or 17(1)(*a*) or (*b*) would conflict with the territorial sea of another state or other area of the sea in which another state has sovereign rights or would be unreasonably close to the coast of another state or is otherwise inappropriate, and

(iv) the outer limit of the exclusive economic zone of Canada or the outer edge of the continental margin or other outer limit of the continental shelf of Canada may be determined; and

(*b*) prescribing areas of the sea adjacent to the coast of Canada as fishing zones of Canada.

verains d'un autre État, placerait la limite à un endroit trop proche du littoral d'un autre État ou serait inopportune pour quelque autre raison,

(iv) la limite extérieure de la zone économique exclusive, ou celle du plateau continental, notamment le rebord externe de la marge continentale;

b) pour constituer en zone de pêche tout espace maritime adjacent à la côte du Canada.

Recommendation — Minister of Justice

26. (1) The Governor in Council may, on the recommendation of the Minister of Justice, make regulations

(*a*) prescribing a work or a class of works for the purpose of the definition "marine installation or structure" in section 2;

(*b*) making any law of a province applicable in respect of any part of the area of the sea in which laws of the province apply under section 9 or 21, even though the law, by its own terms, is applicable only in respect of a particular area within the province;

(*c*) restricting the application of subsection 9(1) or 21(1) to such laws of a province as are specified in the regulations;

(*d*) making subsection 9(1) or 21(1) applicable, on the terms and conditions, if any, specified in the regulations, in respect of any laws of a province that impose a tax or royalty or relate to mineral or other non-living natural resources;

(*e*) excluding any law of a province from the application of subsection 9(1) or 21(1);

(*f*) determining or prescribing the method of determining the safety zone referred to in paragraph 20(1)(*c*);

(*g*) prescribing an area of the sea and a province for the purposes of subsection 9(1), 21(1) or 22(1);

Recommandation du ministre de la Justice

26. (1) Le gouverneur en conseil peut, sur la recommandation du ministre de la Justice, prendre des règlements pour :

a) désigner des ouvrages ou catégories d'ouvrages pour l'application de la définition de « ouvrages en mer », à l'article 2;

b) étendre l'application d'une règle du droit provincial à tout espace maritime extracôtier où le droit de la province en cause s'applique en vertu des articles 9 ou 21, même si cette règle, selon ses propres termes, n'est applicable qu'à une partie du territoire de la province;

c) restreindre l'application des paragraphes 9(1) ou 21(1) à telle règle du droit de la province visée;

d) rendre les paragraphes 9(1) ou 21(1) applicables, en conformité avec les conditions spécifiées dans le règlement, à toute règle du droit provincial imposant une taxe ou des redevances ou traitant des ressources minérales ou autres ressources naturelles non biologiques;

e) exclure toute règle du droit provincial de l'application des paragraphes 9(1) ou 21(1);

f) délimiter ou prescrire le mode de délimitation de la zone de sécurité visée à l'alinéa 20(1)*c*);

(*h*) restricting the application of subsection 22(1), (2) or (3) to courts of a district or territorial division of a province;

(*i*) prescribing, in respect of any area of the sea and for the purpose of subsection 22(1), the manner of determining the province that has the coast nearest to that area;

(*j*) excluding any federal laws or laws of a province or any of their provisions from the application of subsection 20(1) or 21(1), as the case may be, in respect of any area in or above the continental shelf of Canada or in respect of any specified activity in any such area; and

(*k*) making federal laws or laws of a province or any of their provisions applicable, in such circumstances as are specified in the regulations,

(i) in the exclusive economic zone of Canada or in a portion of that zone,

(ii) in or above the continental shelf of Canada or a portion of that shelf, or

(iii) in any area beyond the continental shelf of Canada, where that application is made pursuant to an international agreement or arrangement entered into by Canada.

g) désigner tout espace maritime extracôtier pour l'application des paragraphes 9(1), 21(1) ou 22(1);

h) restreindre l'application des paragraphes 22(1), (2) ou (3) aux tribunaux de telle circonscription ou autre division territoriale de la province;

i) prévoir, pour l'application du paragraphe 22(1), la façon de déterminer la province côtière la plus proche d'un espace maritime donné;

j) exclure une règle du droit fédéral ou provincial de l'application des paragraphes 20(1) ou 21(1), selon le cas, à l'égard de tout ou partie du plateau continental ou des eaux surjacentes, ou à l'égard de certaines activités déterminées;

k) rendre une règle du droit fédéral ou provincial applicable, dans les circonstances spécifiées, à tout ou partie, selon le cas :

(i) de la zone économique exclusive,

(ii) du plateau continental ou des eaux surjacentes,

(iii) des espaces maritimes situés au-delà du plateau continental et faisant l'objet d'une entente ou d'un accord international conclu par le Canada.

striction

(2) A regulation made pursuant to subsection (1) in relation to a law of a province may be restricted to a specific area or place or to a specific provision of the law.

Précision

(2) Le règlement pris en vertu du paragraphe (1) peut ne s'appliquer qu'à un endroit ou à un espace déterminé, ou ne viser que telle règle du droit provincial.

pretation

(3) For the purposes of paragraphs (1)(*j*) and (*k*), federal laws and the laws of a province shall be applied

(*a*) as if the places referred to in any regulations made pursuant to either of those paragraphs formed part of the territory of Canada;

(*b*) notwithstanding that by their terms their application is limited to Canada or a province; and

(*c*) in a manner that is consistent with the rights and freedoms of other states under international law and, in particular, with the rights and freedoms of other states in relation to navigation and overflight.

Interprétation

(3) Pour l'application des alinéas (1)*j*) et *k*), les règles du droit fédéral ou provincial visées s'appliquent :

a) comme si les lieux visés faisaient partie du territoire du Canada;

b) même si, selon leurs propres termes, elles ne s'appliquent qu'au Canada ou à la province, selon le cas;

c) d'une façon compatible avec les droits et libertés que le droit international reconnaît aux autres États, notamment en matière de navigation et de survol.

Publication of proposed regulations

27. (1) A copy of each regulation that the Governor in Council proposes to make pursuant to paragraph 25(*b*) or section 26 shall be published in the *Canada Gazette* at least 60 days before its proposed effective date, and a reasonable opportunity shall be given to interested persons and provinces to make representations with respect to the proposed regulation.

Exception

(2) No proposed regulation that has been published pursuant to this section need again be published under this section, whether or not it has been altered.

Publication

27. (1) Le projet de règlement d'application de l'alinéa 25*b*) ou de l'article 26 est publié dans la *Gazette du Canada* au moins soixante jours avant la date envisagée pour sa prise d'effet, les intéressés — notamment les provinces — se voyant accorder la possibilité de présenter leurs observations.

Dispense

(2) Il n'est pas nécessaire de publier de nouveau le projet de règlement même s'il a été modifié.

PART II

OCEANS MANAGEMENT STRATEGY

Part does not apply to inland waters

28. For greater certainty, this Part does not apply in respect of rivers and lakes.

Eaux internes

28. Il est entendu que la présente partie ne s'applique pas aux lacs, fleuves et rivières.

Development and implementation of strategy

29. The Minister, in collaboration with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, shall lead and facilitate the development and implementation of a national strategy for the management of estuarine, coastal and marine ecosystems in waters that form part of Canada or in which Canada has sovereign rights under international law.

Élaboration et mise en oeuvre

29. Le ministre, en collaboration avec d'autres ministres et organismes fédéraux, les gouvernements provinciaux et territoriaux et les organisations autochtones, les collectivités côtières et les autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales, dirige et favorise l'élaboration et la mise en oeuvre d'une stratégie nationale de gestion des écosystèmes estuariens, côtiers et marins des eaux faisant partie du Canada ou sur lesquelles le droit international reconnaît à celui-ci des droits souverains.

Principles of strategy

30. The national strategy will be based on the principles of

(*a*) sustainable development, that is, development that meets the needs of the present without compromising the ability of future generations to meet their own needs;

(*b*) the integrated management of activities in estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law; and

(*c*) the precautionary approach, that is, erring on the side of caution.

Principes directeurs

30. La stratégie nationale repose sur les principes suivants :

a) le développement durable, c'est-à-dire le développement qui permet de répondre aux besoins actuels sans compromettre la possibilité pour les générations futures de satisfaire les leurs;

b) la gestion intégrée des activités qui s'exercent dans les estuaires et les eaux côtières et marines faisant partie du Canada ou sur lesquelles le droit international reconnaît à celui-ci des droits souverains;

c) la prévention, c'est-à-dire pécher par excès de prudence.

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31. The Minister, in collaboration with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, shall lead and facilitate the development and implementation of plans for the integrated management of all activities or measures in or affecting estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law.

Plans de gestion intégrée

31. Le ministre, en collaboration avec d'autres ministres et organismes fédéraux, les gouvernements provinciaux et territoriaux et les organisations autochtones, les collectivités côtières et les autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales, dirige et favorise l'élaboration et la mise en oeuvre de plans pour la gestion intégrée de toutes les activités ou mesures qui s'exercent ou qui ont un effet dans les estuaires et les eaux côtières et marines faisant partie du Canada ou sur lesquelles le droit international reconnaît à celui-ci des droits souverains.

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32. For the purpose of the implementation of integrated management plans, the Minister

(*a*) shall develop and implement policies and programs with respect to matters assigned by law to the Minister;

(*b*) shall coordinate with other ministers, boards and agencies of the Government of Canada the implementation of policies and programs of the Government with respect to all activities or measures in or affecting coastal waters and marine waters;

(*c*) may, on his or her own or jointly with another person or body or with another minister, board or agency of the Government of Canada, and taking into consideration the views of other ministers, boards and agencies of the Government of Canada, provincial and territorial governments and affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements,

(i) establish advisory or management bodies and appoint or designate, as appropriate, members of those bodies, and

(ii) recognize established advisory or management bodies; and

(*d*) may, in consultation with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aborigi-

Mise en oeuvre des plans de gestion intégrée

32. En vue de la mise en oeuvre des plans de gestion intégrée, le ministre :

a) élabore et met en oeuvre des orientations, des objectifs et des programmes dans les domaines de compétence qui lui sont attribués de droit;

b) recommande et coordonne, avec d'autres ministres ou organismes fédéraux, la mise en oeuvre d'autres orientations, objectifs et programmes du gouvernement fédéral, relativement aux activités ou mesures touchant les eaux côtières ou marines;

c) peut, de sa propre initiative ou conjointement avec d'autres ministres ou organismes fédéraux ou d'autres personnes de droit public ou de droit privé, et après avoir pris en considération le point de vue d'autres ministres et organismes fédéraux, des gouvernements provinciaux et territoriaux et des organisations autochtones, des collectivités côtières et des autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales, constituer des organismes de consultation ou de gestion et, selon le cas, y nommer ou désigner des membres, ou mandater des organismes existants à cet égard;

d) peut, en consultation avec d'autres ministres et organismes fédéraux, les gouvernements provinciaux et territoriaux et les organisations autochtones, les collecti-

nal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, establish marine environmental quality guidelines, objectives and criteria respecting estuaries, coastal waters and marine waters.

vités côtières et les autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales, établir des directives, des objectifs et des critères concernant la qualité du milieu dans les estuaires et les eaux côtières et marines.

Cooperation and agreements

33. (1) In exercising the powers and performing the duties and functions assigned to the Minister by this Act, the Minister

(*a*) shall cooperate with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements;

(*b*) may enter into agreements with any person or body or with another minister, board or agency of the Government of Canada;

(*c*) shall gather, compile, analyse, coordinate and disseminate information;

(*d*) may make grants and contributions on terms and conditions approved by the Treasury Board; and

(*e*) may make recoverable expenditures on behalf of and at the request of any other minister, board or agency of the Government of Canada or of a province or any person or body.

Coopération et accords

33. (1) Dans l'exercice des attributions qui lui sont conférées par la présente loi, le ministre :

a) coopère avec d'autres ministres et organismes fédéraux, les gouvernements provinciaux et territoriaux et les organisations autochtones, les collectivités côtières et les autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales;

b) peut conclure des accords avec d'autres ministres ou toute personne de droit public ou de droit privé;

c) recueille, dépouille, analyse, coordonne et diffuse de l'information;

d) peut accorder des subventions ou contributions suivant les modalités approuvées par le Conseil du Trésor;

e) peut, à la demande d'autres ministres fédéraux ou de personnes de droit public — fédérales ou provinciales — ou de droit privé, engager des dépenses pour leur compte et recouvrer les sommes ainsi exposées.

Consultation

(2) In exercising the powers and performing the duties and functions mentioned in this Part, the Minister may consult with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements.

Consultation

(2) Dans l'exercice des attributions prévues par la présente partie, le ministre peut consulter d'autres ministres et organismes fédéraux, les gouvernements provinciaux et territoriaux et les organisations autochtones, les collectivités côtières et les autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales.

Logistics support, etc.

34. The Minister may coordinate logistics support and provide related assistance for the purposes of advancing scientific knowledge of estuarine, coastal and marine ecosystems.

Soutien logistique

34. Le ministre peut prendre en charge la coordination du soutien logistique d'activités visant à faire progresser la connaissance scientifique des écosystèmes estuariens, côtiers et marins.

Marine protected areas

35. (1) A marine protected area is an area of the sea that forms part of the internal waters of Canada, the territorial sea of Canada or the exclusive economic zone of Canada and has been designated under this section for special protection for one or more of the following reasons:

(*a*) the conservation and protection of commercial and non-commercial fishery resources, including marine mammals, and their habitats;

(*b*) the conservation and protection of endangered or threatened marine species, and their habitats;

(*c*) the conservation and protection of unique habitats;

(*d*) the conservation and protection of marine areas of high biodiversity or biological productivity; and

(*e*) the conservation and protection of any other marine resource or habitat as is necessary to fulfil the mandate of the Minister.

Zones de protection marine

35. (1) Une zone de protection marine est un espace maritime qui fait partie des eaux intérieures, de la mer territoriale ou de la zone économique exclusive du Canada et qui a été désigné en application du présent article en vue d'une protection particulière pour l'une ou plusieurs des raisons suivantes :

a) la conservation et la protection des ressources halieutiques, commerciales ou autres, y compris les mammifères marins, et de leur habitat;

b) la conservation et la protection des espèces en voie de disparition et des espèces menacées, et de leur habitat;

c) la conservation et la protection d'habitats uniques;

d) la conservation et la protection d'espaces marins riches en biodiversité ou en productivité biologique;

e) la conservation et la protection d'autres ressources ou habitats marins, pour la réalisation du mandat du ministre.

Marine protected areas

(2) For the purposes of integrated management plans referred to in sections 31 and 32, the Minister will lead and coordinate the development and implementation of a national system of marine protected areas on behalf of the Government of Canada.

Zones de protection marine

(2) Pour la planification de la gestion intégrée mentionnée aux articles 31 et 32, le ministre dirige et coordonne l'élaboration et la mise en oeuvre d'un système national de zones de protection marine au nom du gouvernement du Canada.

Regulations

(3) The Governor in Council, on the recommendation of the Minister, may make regulations

(*a*) designating marine protected areas; and

(*b*) prescribing measures that may include but not be limited to

(i) the zoning of marine protected areas,

(ii) the prohibition of classes of activities within marine protected areas, and

(iii) any other matter consistent with the purpose of the designation.

Règlements

(3) Sur la recommandation du ministre, le gouverneur en conseil peut, par règlement :

a) désigner des zones de protection marine;

b) prendre toute mesure compatible avec l'objet de la désignation, notamment :

(i) la délimitation de zones de protection marine,

(ii) l'interdiction de catégories d'activités dans ces zones.

Interim marine protected areas in emergency situations

36. (1) The Governor in Council, on the recommendation of the Minister, may make orders exercising any power under section 35 on an emergency basis, where the Minister is of the opinion that a marine resource or habitat is or is likely to be at risk to the extent that such

Situations d'urgence

36. (1) Sur la recommandation du ministre, le gouverneur en conseil peut exercer par décret les pouvoirs que lui confère l'article 35 lorsqu'il estime qu'une ressource ou un habitat marins sont menacés ou risquent de l'être dans la mesure où le décret n'est pas incompa-

orders are not inconsistent with a land claims agreement that has been given effect and has been ratified or approved by an Act of Parliament.

tible avec quelque accord sur des revendications territoriales ratifié, mis en vigueur et déclaré valide par une loi fédérale.

Exemption from *Statutory Instruments Act*

(2) An order made under this section is exempt from the application of sections 3, 5 and 11 of the *Statutory Instruments Act*.

(2) Les articles 3, 5 et 11 de la *Loi sur les textes réglementaires* ne s'appliquent pas au décret pris au titre du présent article.

Loi sur les textes réglementaires

Temporary effect

(3) An order made under this section that is not repealed ceases to have effect 90 days after it is made.

(3) Sauf révocation, le décret produit ses effets pendant une période maximale de quatre-vingt-dix jours à compter de sa prise.

Durée de validité

Offence and punishment

37. Every person who contravenes a regulation made under paragraph 35(3)(*b*) or an order made under subsection 36(1) in the exercise of a power under that paragraph

(*a*) is guilty of an offence punishable on summary conviction and liable to a fine not exceeding $100,000; or

(*b*) is guilty of an indictable offence and liable to a fine not exceeding $500,000.

37. Quiconque contrevient aux règlements d'application de l'alinéa 35(3)*b*) ou à un décret pris en vertu du paragraphe 36(1) dans l'exercice d'un pouvoir prévu à l'alinéa 35(3)*b*) commet une infraction et encourt, sur déclaration de culpabilité :

a) par procédure sommaire, une amende maximale de 100 000 $;

b) par mise en accusation, une amende maximale de 500 000 $.

Infraction et peine

Contravention of unpublished order

38. No person may be convicted of an offence consisting of a contravention of an order made under subsection 36(1) in the exercise of a power under paragraph 35(3)(*b*) that, at the time of the alleged contravention, had not been published in the *Canada Gazette* in both official languages unless it is proved that reasonable steps had been taken before that time to bring the purport of the order to the attention of those persons likely to be affected by it.

38. Nul ne peut être condamné pour violation d'un décret pris en vertu du paragraphe 36(1) dans l'exercice d'un pouvoir prévu à l'alinéa 35(3)*b*) et qui, à la date du fait reproché, n'avait pas été publié dans la *Gazette du Canada* dans les deux langues officielles, sauf s'il est établi qu'à cette date les mesures nécessaires avaient été prises pour porter la substance du décret à la connaissance des personnes susceptibles d'être touchées par celui-ci.

Violation d'un décret non publié

Enforcement officers

39. (1) The Minister may designate any person or class of persons to act as enforcement officers for the purposes of this Act and the regulations.

39. (1) Le ministre peut désigner, individuellement ou par catégorie, les agents de l'autorité jugés nécessaires au contrôle d'application de la présente loi et des règlements.

Désignation d'agents de l'autorité

Designation of provincial government employees

(2) The Minister may not designate any person or class of persons employed by the government of a province unless that government agrees.

(2) La désignation de fonctionnaires provinciaux est toutefois subordonnée à l'agrément du gouvernement provincial intéressé.

Fonctionnaires provinciaux

Certificate of designation

(3) Every enforcement officer must be provided with a certificate of designation as an enforcement officer in a form approved by the Minister and, on entering any place under this Act, the officer shall, if so requested, show the certificate to the occupant or person in charge of the place.

(3) Les agents de l'autorité sont munis d'un certificat de désignation en la forme approuvée par le ministre qu'ils présentent, sur demande, au responsable ou à l'occupant des lieux qui font l'objet de leur visite.

Présentation du certificat

wers of ice officers

(4) For the purposes of this Act and the regulations, enforcement officers have all the powers of a peace officer, but the Minister may specify limits on those powers when designating any person or class of persons.

(4) Pour l'application de la présente loi et de ses règlements, les agents de l'autorité ont tous les pouvoirs d'un agent de la paix; le ministre peut toutefois restreindre ceux-ci lors de la désignation.

Assimilation à un agent de la paix

emptions law orcement ivities

(5) For the purpose of investigations and other law enforcement activities under this Act, the Minister may, on any terms and conditions the Minister considers necessary, exempt enforcement officers who are carrying out duties or functions under this Act, and persons acting under their direction and control, from the application of any provision of this Act or the regulations.

(5) Pour les enquêtes et autres mesures de contrôle d'application de la loi, le ministre peut, aux conditions qu'il juge nécessaires, soustraire tout agent de l'autorité agissant dans l'exercice de ses fonctions — ainsi que toute personne agissant sous la direction ou l'autorité de celui-ci — à l'application de la présente loi ou des règlements, ou de leurs dispositions.

Exemptions

struction

(6) When an enforcement officer is carrying out duties or functions under this Act or the regulations, no person shall

(*a*) knowingly make any false or misleading statement either orally or in writing to the enforcement officer; or

(*b*) otherwise wilfully obstruct the enforcement officer.

(6) Il est interdit d'entraver volontairement l'action des agents de l'autorité dans l'exercice de leurs fonctions ou de leur faire sciemment, oralement ou par écrit, une déclaration fausse ou trompeuse.

Entrave

pections

39.1 (1) For the purpose of ensuring compliance with this Act and the regulations, an enforcement officer may, subject to subsection (3), at any reasonable time enter and inspect any place in which the enforcement officer believes, on reasonable grounds, there is any thing to which this Act or the regulations apply or any document relating to the administration of this Act or the regulations, and the enforcement officer may

(*a*) open or cause to be opened any container that the enforcement officer believes, on reasonable grounds, contains any such thing or document;

(*b*) inspect the thing and take samples free of charge;

(*c*) require any person to produce the document for inspection or copying, in whole or in part; and

(*d*) seize any thing by means of or in relation to which the enforcement officer believes, on reasonable grounds, this Act or the regulations have been contravened or that the enforcement officer believes, on reasonable grounds, will provide evidence of a contravention.

39.1 (1) Dans le but de faire observer la présente loi et ses règlements, l'agent de l'autorité peut, à toute heure convenable et sous réserve du paragraphe (3), procéder à la visite de tout lieu s'il a des motifs raisonnables de croire que s'y trouve un objet visé par la présente loi ou les règlements ou un document relatif à l'application de ceux-ci. Il peut en outre :

Visite

a) ouvrir ou faire ouvrir tout contenant où, à son avis, se trouve un tel objet ou document;

b) examiner tout objet et en prélever, sans compensation, des échantillons;

c) exiger la communication du document, pour examen ou reproduction totale ou partielle;

d) saisir tout objet qui, à son avis, a servi ou donné lieu à une contravention à la présente loi ou à ses règlements ou qui peut servir à la prouver.

L'avis de l'agent de l'autorité doit être fondé sur des motifs raisonnables.

Conveyance

(2) For the purposes of carrying out the inspection, the enforcement officer may stop a conveyance or direct that it be moved to a place where the inspection can be carried out.

Moyens de transport

(2) L'agent de l'autorité peut procéder à l'immobilisation du moyen de transport qu'il entend visiter et le faire conduire en tout lieu où il peut effectuer la visite.

Dwelling-place

(3) The enforcement officer may not enter a dwelling-place except with the consent of the occupant or person in charge of the dwelling-place or under the authority of a warrant.

Local d'habitation

(3) Dans le cas d'un local d'habitation, l'agent de l'autorité ne peut procéder à la visite sans l'autorisation du responsable ou de l'occupant que s'il est muni d'un mandat de perquisition.

Warrant

(4) Where on *ex parte* application a justice, as defined in section 2 of the *Criminal Code*, is satisfied by information on oath that

(*a*) the conditions for entry described in subsection (1) exist in relation to a dwelling-place,

(*b*) entry to the dwelling-place is necessary in relation to the administration of this Act or the regulations, and

(*c*) entry to the dwelling-place has been refused or there are reasonable grounds for believing that entry will be refused,

the justice may issue a warrant authorizing the enforcement officer to enter the dwelling-place subject to any conditions that may be specified in the warrant.

Mandat de perquisition

(4) Sur demande *ex parte*, le juge de paix — au sens de l'article 2 du *Code criminel* — peut signer un mandat autorisant, sous réserve des conditions éventuellement fixées, l'agent de l'autorité à procéder à la visite d'un local d'habitation s'il est convaincu, sur la foi d'une dénonciation sous serment, que sont réunis les éléments suivants :

a) les circonstances prévues au paragraphe (1) existent;

b) la visite est nécessaire pour l'application de la présente loi ou de ses règlements;

c) un refus a été opposé à la visite ou il y a des motifs raisonnables de croire que tel sera le cas.

Search and seizure without warrant

39.2 For the purpose of ensuring compliance with this Act and the regulations, an enforcement officer may exercise the powers of search and seizure provided in section 487 of the *Criminal Code* without a warrant, if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would not be feasible to obtain the warrant.

Perquisition sans mandat

39.2 Dans le but de faire observer la présente loi et ses règlements, l'agent de l'autorité peut exercer sans mandat les pouvoirs mentionnés à l'article 487 du *Code criminel* en matière de perquisition et de saisie lorsque l'urgence de la situation rend difficilement réalisable l'obtention du mandat, sous réserve que les conditions de délivrance de celui-ci soient réunies.

Custody of things seized

39.3 (1) Subject to subsections (2) and (3), where an enforcement officer seizes a thing under this Act or under a warrant issued under the *Criminal Code*,

(*a*) sections 489.1 and 490 of the *Criminal Code* apply; and

(*b*) the enforcement officer, or any person that the officer may designate, shall retain custody of the thing, subject to any order made under section 490 of the *Criminal Code*.

Garde

39.3 (1) Sous réserve des paragraphes (2) et (3) :

a) les articles 489.1 et 490 du *Code criminel* s'appliquent en cas de saisies d'objets effectuées par l'agent de l'autorité en vertu de la présente loi ou d'un mandat délivré au titre du *Code criminel*;

b) la responsabilité de ces objets incombe, sous réserve d'une ordonnance rendue aux termes de l'article 490 du *Code criminel*, à l'agent de l'autorité ou à la personne qu'il désigne.

'rfeiture ıere vnership not certainable

(2) Where the lawful ownership of or entitlement to the seized thing cannot be ascertained within thirty days after its seizure, the thing or any proceeds of its disposition are forfeited to

(*a*) Her Majesty in right of Canada, if the thing was seized by an enforcement officer employed in the public service of Canada; or

(*b*) Her Majesty in right of a province, if the thing was seized by an enforcement officer employed by the government of that province.

(2) Dans le cas où leur propriétaire légitime — ou la personne qui a légitimement droit à leur possession — ne peut être identifié dans les trente jours suivant la saisie, les objets, ou le produit de leur aliénation, sont confisqués au profit de Sa Majesté du chef du Canada ou d'une province, selon que l'agent de l'autorité saisissant est un fonctionnaire de l'administration publique fédérale ou un fonctionnaire de la province en question.

Confiscation de plein droit

'rishable 'ggs

(3) Where the seized thing is perishable, the enforcement officer may dispose of it or destroy it, and any proceeds of its disposition must be

(*a*) paid to the lawful owner or person lawfully entitled to possession of the thing, unless proceedings under this Act are commenced within ninety days after its seizure; or

(*b*) retained by the enforcement officer pending the outcome of the proceedings.

(3) L'agent de l'autorité peut aliéner ou détruire les objets saisis périssables; le produit de l'aliénation est soit remis à leur propriétaire légitime ou à la personne qui a légitimement droit à leur possession, soit, lorsque des poursuites fondées sur la présente loi ont été intentées dans les quatre-vingt-dix jours suivant la saisie, retenu par lui jusqu'au règlement de l'affaire.

Biens périssables

'bandonment

(4) The owner of the seized thing may abandon it to Her Majesty in right of Canada or a province.

(4) Le propriétaire légitime de tout objet saisi en application de la présente loi peut l'abandonner au profit de Sa Majesté du chef du Canada ou d'une province.

Abandon

'sposition by inister

39.4 Any thing that has been forfeited or abandoned under this Act must be dealt with and disposed of as the Minister may direct.

39.4 Il est disposé des objets saisis ou du produit de leur aliénation conformément aux instructions du ministre.

Disposition par le ministre

'ility for sts

39.5 The lawful owner and any person lawfully entitled to possession of any thing seized, abandoned or forfeited under this Act are jointly and severally liable for all the costs of inspection, seizure, abandonment, forfeiture or disposition incurred by Her Majesty in right of Canada in excess of any proceeds of disposition of the thing that have been forfeited to Her Majesty under this Act.

39.5 Le propriétaire légitime et toute personne ayant légitimement droit à la possession des objets saisis, abandonnés ou confisqués au titre de la présente loi sont solidairement responsables des frais — liés à la visite, à l'abandon, à la saisie, à la confiscation ou à l'aliénation — supportés par Sa Majesté du chef du Canada lorsqu'ils en excèdent le produit de l'aliénation.

Frais

ontravention Act or gulations

39.6 (1) Every person who contravenes subsection 39(6) or any regulation made under section 32.1

(*a*) is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding $100,000; or

39.6 (1) Quiconque contrevient au paragraphe 39(6) ou aux règlements d'application de l'article 32.1 commet une infraction et encourt, sur déclaration de culpabilité :

a) par procédure sommaire, une amende maximale de 100 000 $;

Infraction et peine

(*b*) is guilty of an indictable offence and is liable to a fine not exceeding $500,000.

b) par mise en accusation, une amende maximale de 500 000 $.

Subsequent offence

(2) Where a person is convicted of an offence under this Act a second or subsequent time, the amount of the fine for the subsequent offence may, notwithstanding subsection (1), be double the amount set out in that subsection.

Récidive

(2) Le montant des amendes prévues au paragraphe (1) peut être doublé en cas de récidive.

Continuing offence

(3) A person who commits or continues an offence on more than one day is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

Infraction continue

(3) Il est compté une infraction distincte pour chacun des jours au cours desquels se commet ou se continue l'infraction.

Fines cumulative

(4) A fine imposed for an offence involving more than one animal, plant or other organism may be calculated in respect of each one as though it had been the subject of a separate information and the fine then imposed is the total of that calculation.

Amendes cumulatives

(4) En cas de déclaration de culpabilité pour une infraction portant sur plusieurs animaux, végétaux ou autres organismes, l'amende peut être calculée sur chacun d'eux, comme s'ils avaient fait l'objet de dénonciations distinctes; l'amende finale infligée est alors la somme totale obtenue.

Additional fine

(5) Where a person has been convicted of an offence and the court is satisfied that monetary benefits accrued to the person as a result of the commission of the offence,

(*a*) the court may order the person to pay an additional fine in an amount equal to the court's estimation of the amount of the monetary benefits; and

(*b*) the additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act.

Amende supplémentaire

(5) Le tribunal saisi d'une poursuite pour infraction à la présente loi peut, s'il constate que le contrevenant a tiré des avantages financiers de la perpétration de celle-ci, lui infliger, en sus de l'amende maximale prévue par la présente loi, une amende supplémentaire correspondant à son évaluation de ces avantages.

Forfeiture

39.7 (1) Where a person is convicted of an offence, the convicting court may, in addition to any punishment imposed, order that any seized thing by means of or in relation to which the offence was committed, or any proceeds of its disposition, be forfeited to Her Majesty in right of Canada.

Confiscation

39.7 (1) Sur déclaration de culpabilité du contrevenant, le tribunal peut prononcer, en sus de la peine infligée, la confiscation au profit de Sa Majesté du chef du Canada des objets saisis ou du produit de leur aliénation.

Return where no forfeiture ordered

(2) Where the convicting court does not order the forfeiture, the seized thing, or the proceeds of its disposition, must be returned to its lawful owner or the person lawfully entitled to it.

Restitution des objets non confisqués

(2) Si le tribunal ne prononce pas la confiscation, les objets saisis, ou le produit de leur aliénation, sont restitués au propriétaire légitime ou à la personne qui a légitimement droit à leur possession.

Retention or sale

39.8 Where a fine is imposed on a person convicted of an offence, any seized thing, or any proceeds of its disposition, may be retained until the fine is paid, or the thing may

Rétention ou vente

39.8 En cas de déclaration de culpabilité, les objets saisis, ou le produit de leur aliénation, peuvent être retenus jusqu'au paiement de l'amende; ces objets peuvent, s'ils ne l'ont

be sold in satisfaction of the fine and the proceeds applied, in whole or in part, in payment of the fine.

pas déjà été, être vendus, et le produit de leur aliénation peut être affecté en tout ou en partie au paiement de l'amende.

Orders of court

39.9 Where a person is convicted of an offence, the court may, in addition to any punishment imposed and having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

(*a*) prohibiting the person from doing any act or engaging in any activity that could, in the opinion of the court, result in the continuation or repetition of the offence;

(*b*) directing the person to take any action that the court considers appropriate to remedy or avoid any harm to estuarine, coastal or ocean waters, or their resources that resulted or may result from the commission of the offence;

(*c*) directing the person to publish, in any manner that the court considers appropriate, the facts relating to the commission of the offence;

(*d*) directing the person to pay the Minister or the government of a province compensation, in whole or in part, for the cost of any remedial or preventive action taken by or on behalf of the Minister or that government as a result of the commission of the offence;

(*e*) directing the person to perform community service in accordance with any reasonable conditions that may be specified in the order;

(*f*) directing the person to submit to the Minister, on application to the court by the Minister within three years after the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;

(*g*) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences; and

(*h*) directing the person to post a bond or pay into court an amount of money that the court

Ordonnance du tribunal

39.9 En plus de toute peine infligée et compte tenu de la nature de l'infraction ainsi que des circonstances de sa perpétration, le tribunal peut rendre une ordonnance imposant au contrevenant tout ou partie des obligations suivantes :

a) s'abstenir de tout acte ou activité risquant, selon le tribunal, d'entraîner la continuation de l'infraction ou la récidive;

b) prendre les mesures que le tribunal estime indiquées pour réparer ou éviter les dommages aux estuaires et aux eaux côtières et marines résultant ou pouvant résulter de la perpétration de l'infraction;

c) publier, de la façon indiquée par le tribunal, les faits liés à la perpétration de l'infraction;

d) indemniser le ministre ou le gouvernement de la province, en tout ou en partie, des frais supportés pour la réparation ou la prévention des dommages résultant ou pouvant résulter de la perpétration de l'infraction;

e) exécuter des travaux d'intérêt collectif à des conditions raisonnables;

f) fournir au ministre, sur demande présentée par celui-ci dans les trois ans suivant la déclaration de culpabilité, les renseignements relatifs à ses activités que le tribunal estime justifiés en l'occurrence;

g) satisfaire aux autres exigences que le tribunal estime justifiées pour assurer sa bonne conduite et empêcher toute récidive;

h) en garantie de l'exécution des obligations imposées au titre du présent article, fournir le cautionnement ou déposer auprès du tribunal le montant que celui-ci estime indiqué.

considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section.

Suspended sentence

39.10 (1) Where a person is convicted of an offence and the court suspends the passing of sentence pursuant to the *Criminal Code*, the court may, in addition to any probation order made on suspending the passing of that sentence, make an order containing one or more of the prohibitions, directions or requirements mentioned in section 39.9.

Imposition of sentence

(2) Where the person does not comply with the order or is convicted of another offence, within three years after the order was made, the court may, on the application of the prosecution, impose any sentence that could have been imposed if the passing of sentence had not been suspended.

Limitation period

39.11 (1) Proceedings by way of summary conviction in respect of an offence may be commenced at any time within, but not later than, two years after the day on which the subject-matter of the proceedings became known to the Minister.

Minister's certificate

(2) A document appearing to have been issued by the Minister, certifying the day on which the subject-matter of any proceedings became known to the Minister, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is proof of the matter asserted in it.

Procedure

39.12 (1) In addition to the procedures set out in the *Criminal Code* for commencing a proceeding, proceedings in respect of any offence prescribed by the regulations may be commenced by an enforcement officer

(*a*) completing a ticket that consists of a summons portion and an information portion;

(*b*) delivering the summons portion to the accused or mailing it to the accused at the accused's latest known address; and

(*c*) filing the information portion with a court of competent jurisdiction before the summons portion has been delivered or mailed or as soon as is practicable afterward.

Condamnation avec sursis

39.10 (1) Lorsque, en vertu du *Code criminel*, il sursoit au prononcé de la peine, le tribunal, en plus de toute ordonnance de probation rendue au titre de cette loi à l'occasion du sursis, peut, par ordonnance, enjoindre au contrevenant de se conformer à l'une ou plusieurs des obligations mentionnées à l'article 39.9.

Prononcé de la peine

(2) Sur demande de la poursuite, le tribunal peut, lorsque la personne visée par l'ordonnance ne se conforme pas aux modalités de celle-ci ou est déclarée coupable d'une autre infraction à la présente loi dans les trois ans qui suivent la date de l'ordonnance, prononcer la peine qui aurait pu être infligée s'il n'y avait pas eu sursis.

Prescription

39.11 (1) Les poursuites visant une infraction punissable sur déclaration de culpabilité par procédure sommaire se prescrivent par deux ans à compter de la date où le ministre a eu connaissance des éléments constitutifs de l'infraction.

Certificat

(2) Le document censé délivré par le ministre et attestant la date où les éléments sont parvenus à sa connaissance est admissible en preuve et fait foi de son contenu sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire.

Procédure

39.12 (1) En plus des modes prévus au *Code criminel*, la poursuite des infractions précisées par règlement peut être intentée de la façon suivante :

a) l'agent de l'autorité remplit les deux parties — sommation et dénonciation — du formulaire de contravention;

b) il remet la sommation à l'accusé ou la lui envoie par la poste à sa dernière adresse connue;

c) avant la remise ou l'envoi de la sommation, ou dès que possible par la suite, il dépose la dénonciation auprès du tribunal compétent.

Content of ticket

(2) The summons and information portions of the ticket must

(*a*) set out a description of the offence and the time and place of its alleged commission;

(*b*) include a statement, signed by the enforcement officer who completes the ticket, that the officer has reasonable grounds to believe that the accused committed the offence;

(*c*) set out the amount of the fine prescribed by the regulations for the offence and the manner in which and period within which it may be paid;

(*d*) include a statement that if the accused pays the fine within the period set out in the ticket, a conviction will be entered and recorded against the accused; and

(*e*) include a statement that if the accused wishes to plead not guilty or for any other reason fails to pay the fine within the period set out in the ticket, the accused must appear in the court on the day and at the time set out in the ticket.

Contenu du formulaire de contravention

(2) Les deux parties du formulaire de contravention comportent les éléments suivants :

a) définition de l'infraction et indication du lieu et du moment où elle aurait été commise;

b) déclaration signée dans laquelle l'agent de l'autorité atteste qu'il a des motifs raisonnables de croire que l'accusé a commis l'infraction;

c) indication du montant de l'amende réglementaire pour l'infraction, ainsi que mention du mode et du délai de paiement;

d) avertissement précisant que, en cas de paiement de l'amende dans le délai fixé, une déclaration de culpabilité sera inscrite au dossier de l'accusé;

e) mention du fait que, en cas de plaidoyer de non-culpabilité ou de non-paiement de l'amende dans le délai fixé, l'accusé est tenu de comparaître au tribunal, aux lieu, jour et heure indiqués.

Notice of forfeiture

(3) Where a thing is seized under this Act and proceedings relating to it are commenced by way of the ticketing procedure, the enforcement officer who completes the ticket shall give written notice to the accused that, if the accused pays the fine prescribed by the regulations within the period set out in the ticket, the thing, or any proceeds of its disposition, will be immediately forfeited to Her Majesty.

Préavis de confiscation

(3) En cas de poursuite par remise d'un formulaire de contravention, l'agent de l'autorité est tenu de remettre à l'accusé un avis précisant que, sur paiement de l'amende réglementaire dans le délai fixé, les objets saisis, ou le produit de leur aliénation, seront immédiatement confisqués au profit de Sa Majesté du chef du Canada.

Consequences of payment

(4) Where an accused to whom the summons portion of a ticket is delivered or mailed pays the prescribed fine within the period set out in the ticket,

(*a*) the payment constitutes a plea of guilty to the offence and a conviction must be entered against the accused and no further action may be taken against the accused in respect of that offence; and

(*b*) notwithstanding section 39.3, any thing seized from the accused under this Act that relates to the offence, or any proceeds of its disposition, are forfeited to

Effet du paiement

(4) Lorsque, après réception de la sommation, l'accusé paie l'amende réglementaire dans le délai fixé :

a) d'une part, le paiement constitue un plaidoyer de culpabilité à l'égard de l'infraction et une déclaration de culpabilité est inscrite à son dossier, aucune autre poursuite ne pouvant dès lors être intentée contre lui à cet égard;

b) d'autre part, malgré l'article 39.3, les objets saisis entre ses mains en rapport avec l'infraction, ou le produit de leur aliénation,

(i) Her Majesty in right of Canada, if the thing was seized by an enforcement officer employed in the public service of Canada, or

(ii) Her Majesty in right of a province, if the thing was seized by an enforcement officer employed by the government of that province.

sont confisqués au profit de Sa Majesté du chef du Canada ou d'une province, selon que l'agent de l'autorité saisissant est fonctionnaire de l'administration publique fédérale ou fonctionnaire de la province en question.

Regulations

(5) The Governor in Council may make regulations prescribing

(*a*) offences in respect of which this section applies and the manner in which the offences are to be described in tickets; and

(*b*) the amount of the fine for a prescribed offence, but the amount may not exceed $2,000.

Règlements

(5) Le gouverneur en conseil peut, par règlement, déterminer :

a) les infractions visées par le présent article ainsi que leur désignation dans le formulaire de contravention;

b) le montant de l'amende afférente à concurrence de 2 000$.

PART III

POWERS, DUTIES AND FUNCTIONS OF THE MINISTER

General

Powers, duties and functions of the Minister

40. (1) As the Minister responsible for oceans, the powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not assigned by law to any other department, board or agency of the Government of Canada, relating to the policies and programs of the Government of Canada respecting oceans.

Encouragement of activities

(2) For the purpose of subsection (1), the Minister shall encourage activities necessary to foster understanding, management and sustainable development of oceans and marine resources and the provision of coast guard and hydrographic services to ensure the facilitation of marine trade, commerce and safety in collaboration with other ministers of the Government of Canada.

Coast Guard Services

Coast guard services

41. (1) As the Minister responsible for coast guard services, the powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not assigned by law to any other department, board or agency of the Government of Canada, relating to

PARTIE III

ATTRIBUTIONS DU MINISTRE

Dispositions générales

Attributions

40. (1) Le ministre étant responsable des océans, ses pouvoirs et fonctions s'étendent d'une façon générale à tous les domaines de compétence du Parlement non attribués de droit à d'autres ministères ou organismes fédéraux et liés à des orientations, objectifs et programmes du gouvernement fédéral touchant les océans.

Activités

(2) Dans l'exercice de ses attributions et en collaboration avec d'autres ministres fédéraux, il encourage les activités propres à promouvoir la connaissance, la gestion et la préservation des océans et des ressources marines, dans la perspective du développement durable, et fournit des services de garde côtière et des services hydrographiques destinés à assurer la sécurité de la navigation et à faciliter le commerce maritime.

Garde côtière

Responsabilité du ministre

41. (1) Le ministre étant responsable des services de garde côtière, ses pouvoirs et fonctions s'étendent d'une façon générale à tous les domaines de compétence du Parlement non attribués de droit à d'autres ministères ou organismes fédéraux concernant :

(*a*) services for the safe, economical and efficient movement of ships in Canadian waters through the provision of

(i) aids to navigation systems and services,

(ii) marine communications and traffic management services,

(iii) ice breaking and ice management services, and

(iv) channel maintenance;

(*b*) the marine component of the federal search and rescue program;

(*c*) pleasure craft safety, including the regulation of the construction, inspection, equipment and operation of pleasure craft;

(*d*) marine pollution prevention and response; and

(*e*) the support of departments, boards and agencies of the Government of Canada through the provision of ships, aircraft and other marine services.

a) les services destinés à assurer la sécurité, la rentabilité et l'efficacité du déplacement des navires dans les eaux canadiennes par la fourniture :

(i) de systèmes et de services d'aide à la navigation,

(ii) de services de communication maritime et de gestion du trafic maritime,

(iii) de services de brise-glace et de surveillance des glaces,

(iv) de services d'entretien des canaux;

b) le volet maritime du programme fédéral de recherche et de sauvetage;

c) la sécurité de la navigation de plaisance, y compris la réglementation de la construction, de l'inspection, de l'équipement et du fonctionnement des embarcations de plaisance;

d) la prévention de la pollution marine et l'intervention environnementale;

e) les services de navigation maritime et aérienne et les autres services maritimes fournis aux ministères et organismes fédéraux.

d effective

(2) The Minister shall ensure that the services referred to in subparagraphs (1)(*a*)(i) to (iv) are provided in a cost effective manner.

Obligation du ministre

(2) Le ministre devra s'assurer que les services mentionnés aux sous-alinéas (1)*a*)(i) à (iv) sont dispensés de la manière la plus économique et la plus judicieuse possible.

Marine Sciences

Sciences de la mer

uctions

42. In exercising the powers and performing the duties and functions assigned by paragraph 4(1)(*c*) of the *Department of Fisheries and Oceans Act*, the Minister may

(*a*) collect data for the purpose of understanding oceans and their living resources and ecosystems;

(*b*) conduct hydrographic and oceanographic surveys of Canadian and other waters;

(*c*) conduct marine scientific surveys relating to fisheries resources and their supporting habitat and ecosystems;

(*d*) conduct basic and applied research related to hydrography, oceanography and other marine sciences, including the study

42. Dans le cadre de ses attributions au titre de l'alinéa 4(1)*c*) de la *Loi sur le ministère des Pêches et des Océans*, le ministre est investi des pouvoirs suivants :

Pouvoirs du ministre

a) assurer la collecte de données en vue d'une meilleure connaissance des océans, de leurs ressources biologiques et de leurs écosystèmes;

b) effectuer des levés hydrographiques et océanographiques dans les eaux canadiennes et autres;

c) effectuer des levés scientifiques concernant les ressources halieutiques, leur habitat et les écosystèmes;

d) entreprendre des recherches fondamentales et appliquées dans les domaines de

of fish and their supporting habitat and ecosystems;

(*e*) carry out investigations for the purpose of understanding oceans and their living resources and ecosystems;

(*f*) prepare and publish data, reports, statistics, charts, maps, plans, sections and other documents;

(*g*) authorize the distribution or sale of data, reports, statistics, charts, maps, plans, sections and other documents;

(*h*) prepare in collaboration with the Minister of Foreign Affairs, publish and authorize the distribution or sale of charts delineating, consistently with the nature and scale of the charts, all or part of the territorial sea of Canada, the contiguous zone of Canada, the exclusive economic zone of Canada and the fishing zones of Canada and adjacent waters;

(*i*) participate in ocean technology development; and

(*j*) conduct studies to obtain traditional ecological knowledge for the purpose of understanding oceans and their living resources and ecosystems.

l'hydrographie, de l'océanographie et des autres sciences de la mer, y compris l'étude des poissons, de leur habitat et des écosystèmes;

e) procéder à des enquêtes en vue d'une meilleure connaissance des océans, de leurs ressources biologiques et de leurs écosystèmes;

f) établir et publier des données, rapports, statistiques, cartes, plans, sections et autres documents;

g) autoriser la distribution ou la vente de données, rapports, statistiques, cartes, plans, sections et autres documents;

h) dresser, en collaboration avec le ministre des Affaires étrangères, et publier des cartes marines montrant, en fonction de leur échelle et de leur finalité, tout ou partie de la mer territoriale, de la zone contiguë, de la zone économique exclusive et des zones de pêche du Canada, ainsi que des eaux adjacentes, et en autoriser la distribution ou la vente;

i) participer à l'avancement de la technologie marine;

j) effectuer des études pour mettre à profit les connaissances écologiques traditionnelles en vue d'une meilleure connaissance des océans, de leurs ressources biologiques et de leurs écosystèmes.

Powers

43. Subject to section 4 of the *Department of Fisheries and Oceans Act* respecting the powers, duties and functions of the Minister in relation to matters mentioned in that section over which Parliament has jurisdiction, the Minister

(*a*) is responsible for coordinating, promoting and recommending national policies and programs with respect to fisheries science, hydrography, oceanography and other marine sciences;

(*b*) in carrying out his or her responsibilities under this section, may

(i) conduct or cooperate with persons conducting applied and basic research programs and investigations and economic studies for the purpose of under-

Orientations, objectifs et programmes

43. Dans le cadre fixé pour l'exercice de ses attributions par l'article 4 de la *Loi sur le ministère des Pêches et des Océans*, il incombe au ministre de recommander, de promouvoir et de coordonner les orientations, les objectifs et les programmes du gouvernement fédéral en ce qui touche les pêches, l'hydrographie, l'océanographie et les autres sciences de la mer. À cette fin, il peut exécuter — ou collaborer avec des personnes qui exécutent — des programmes de recherche fondamentale et appliquée, ainsi que des analyses et des études économiques, en vue d'une meilleure connaissance des océans, de leurs ressources biologiques et de leurs écosystèmes. Il peut à cet effet établir ou maintenir — notamment à bord de navires — des instituts de recherche, des laboratoires et d'autres instal-

standing oceans and their living resources and ecosystems, and

(ii) for that purpose maintain and operate ships, research institutes, laboratories and other facilities for research, surveying and monitoring for the purpose of understanding oceans and their living resources and ecosystems; and

(*c*) may provide marine scientific advice, services and support to the Government of Canada and, on behalf of the Government, to the governments of the provinces, to other states, to international organizations and to other persons.

lations de recherche, d'étude et de contrôle, et veiller à leur fonctionnement. Il peut, de plus, fournir conseils, services et soutien dans le domaine des sciences de la mer au gouvernement du Canada et, au nom de celui-ci, aux gouvernements des provinces, aux autres États, aux organismes internationaux et à toute autre personne.

Marine scientific research by foreign ships

44. The Minister may

(*a*) request the Minister of Foreign Affairs to attach to a consent of the Minister of Foreign Affairs under paragraph 3(2)(*c*) of the *Coasting Trade Act* a condition that the foreign ship or non-duty paid ship supply the Minister with the results of the marine scientific research conducted by that ship in waters that form part of Canada or in which Canada has sovereign rights under international law; and

(*b*) establish guidelines, not inconsistent with Canada's international obligations, for use by foreign ships and non-duty paid ships in conducting marine scientific research in waters that form part of Canada or in which Canada has sovereign rights under international law.

Recherche scientifique : navires étrangers

44. Le ministre peut demander au ministre des Affaires étrangères d'assujettir l'octroi de la licence visée à l'alinéa 3(2)*c*) de la *Loi sur le cabotage* à la condition que lui soient fournis, pour le compte du navire étranger ou non dédouané en cause, les résultats des recherches océanographiques auxquelles a servi ce dernier dans les eaux faisant partie du Canada ou sur lesquelles le droit international reconnaît à celui-ci des droits souverains. Il peut en outre établir, à l'intention des navires étrangers et non dédouanés, des directives compatibles avec les obligations internationales du Canada au sujet de la recherche océanographique dans ces mêmes zones maritimes.

Minister's powers

45. As the Minister responsible for hydrographic services, the powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not assigned by law to any other department, board or agency of the Government of Canada, relating to

(*a*) setting standards and establishing guidelines for use by hydrographers and others in collecting data and preparing charts on behalf of the Minister; and

(*b*) providing hydrographic advice, services and support to the Government of Canada

Services hydrographiques

45. Le ministre étant responsable des services hydrographiques, ses pouvoirs et fonctions s'étendent d'une façon générale à tous les domaines de compétence du Parlement non attribués de droit à d'autres ministères ou organismes fédéraux concernant :

a) l'établissement de normes et de directives, à l'intention notamment des hydrographes, relativement à la collecte des données et à la préparation des cartes sous l'autorité du ministre;

and, on behalf of the Government, to the governments of the provinces, to other states, to international organizations and to other persons.

b) la prestation de conseils et de services en matière hydrographique au gouvernement du Canada et, au nom de celui-ci, aux gouvernements des provinces, aux autres États, aux organismes internationaux et à toute autre personne.

Entry on lands

46. A hydrographer may, for the purpose of conducting a hydrographic survey on behalf of the Minister, enter on or pass over the lands of any person, but shall take all reasonable precautions to avoid causing any damage in doing so.

Propriété privée

46. Tout hydrographe peut, afin d'effectuer un levé hydrographique sous l'autorité du ministre, pénétrer sur la propriété de qui que ce soit ou la traverser; il prend toutefois toutes les précautions voulues pour éviter d'y causer des dommages.

Fees

Facturation

Fees for services or use of facilities

47. (1) The Minister may, subject to any regulations that the Treasury Board may make for the purposes of this section, fix the fees to be paid for a service or the use of a facility provided under this Act by the Minister, the Department or any board or agency of the Government of Canada for which the Minister has responsibility.

Facturation des services et installations

47. (1) Le ministre peut, sous réserve des règlements d'application du présent article éventuellement pris par le Conseil du Trésor, fixer les prix à payer pour la fourniture de services ou d'installations au titre de la présente loi par lui-même ou le ministère, ou tout organisme fédéral dont il est, du moins en partie, responsable.

Amount not to exceed cost

(2) Fees for a service or the use of a facility that are fixed under subsection (1) may not exceed the cost to Her Majesty in right of Canada of providing the service or the use of the facility.

Plafonnement

(2) Les prix fixés dans le cadre du paragraphe (1) ne peuvent excéder les coûts supportés par Sa Majesté du chef du Canada pour la fourniture des services ou des installations.

Fees for products, rights and privileges

48. The Minister may, subject to any regulations that the Treasury Board may make for the purposes of this section, fix fees in respect of products, rights and privileges provided under this Act by the Minister, the Department or any board or agency of the Government of Canada for which the Minister has responsibility.

Facturation des produits, droits et avantages

48. Le ministre peut, sous réserve des règlements d'application du présent article éventuellement pris par le Conseil du Trésor, fixer les prix à payer pour la fourniture de produits ou l'attribution de droits ou d'avantages au titre de la présente loi par lui-même ou le ministère ou tout organisme fédéral dont il est, du moins en partie, responsable.

Fees in respect of regulatory processes, etc.

49. (1) The Minister may, subject to any regulations that the Treasury Board may make for the purposes of this section, fix fees in respect of regulatory processes or approvals provided under this Act by the Minister, the Department or any board or agency of the Government of Canada for which the Minister has responsibility.

Facturation des procédés ou autorisations réglementaires

49. (1) Le ministre peut, sous réserve des règlements d'application du présent article éventuellement pris par le Conseil du Trésor, fixer les prix à payer pour la fourniture de procédés réglementaires ou l'attribution d'autorisations réglementaires au titre de la présente loi par lui-même ou le ministère, ou tout organisme fédéral dont il est, du moins en partie, responsable.

Amount

(2) Fees that are fixed under subsection (1) shall in the aggregate not exceed an amount sufficient to compensate Her Majesty in right of Canada for any reasonable outlays incurred

Montant

(2) Les prix fixés dans le cadre du paragraphe (1) ne peuvent dépasser, dans l'ensemble, un montant suffisant pour indemniser Sa Majesté du chef du Canada des dépenses

by Her Majesty for the purpose of providing the regulatory processes or approvals.

entraînées pour elle par la fourniture des procédés réglementaires ou l'attribution des autorisations réglementaires.

Consultation

50. (1) Before fixing a fee under this Act, the Minister shall consult with such persons or bodies as the Minister considers to be interested in the matter.

50. (1) Avant de fixer un prix dans le cadre de la présente loi, le ministre consulte les personnes de droit public et de droit privé qu'il juge intéressées.

Consultations

Publication

(2) The Minister shall, within 30 days after fixing a fee under this Act, publish the fee in the *Canada Gazette* and by such appropriate electronic or other means that the Treasury Board may authorize by regulation.

(2) Dans les trente jours suivant la fixation d'un prix dans le cadre de la présente loi, le ministre publie celui-ci dans la *Gazette du Canada* et par tout autre moyen indiqué, notamment électronique, que le Conseil du Trésor peut, par règlement, autoriser.

Publication

Reference to scrutiny committee

(3) Any fee fixed under this Act shall stand referred to the Committee referred to in section 19 of the *Statutory Instruments Act* to be reviewed and scrutinized as if it were a statutory instrument.

(3) Le comité visé à l'article 19 de la *Loi sur les textes réglementaires* est saisi d'office des prix fixés dans le cadre de la présente loi pour que ceux-ci fassent l'objet de l'étude et du contrôle prévus pour les textes réglementaires.

Renvoi en comité

Power to make regulations

51. The Treasury Board may make regulations for the purposes of section 47, 48, 49 or 50.

51. Le Conseil du Trésor peut prendre des règlements d'application des articles 47 à 50.

Pouvoir réglementaire

Review

52. (1) The administration of this Act shall, within three years after the coming into force of this section, be reviewed by the Standing Committee on Fisheries and Oceans.

52. (1) Le Comité permanent des pêches et des océans est chargé de l'examen de l'application de la présente loi, dans les trois ans suivant l'entrée en vigueur du présent article.

Examen

Report to Parliament

(2) The Committee shall undertake a comprehensive review of the provisions and operation of this Act, including the consequences of its implementation, and shall, within a year after the review is undertaken or within such further time as the House of Commons may authorize, submit a report to Parliament thereon including a statement of any changes to this Act or its administration that the Committee would recommend.

(2) Le comité examine à fond les dispositions de la présente loi ainsi que les conséquences de son application en vue de la présentation, dans un délai d'un an à compter du début de l'examen ou tel délai plus long autorisé par la Chambre des communes, d'un rapport au Parlement où seront consignées ses conclusions ainsi que ses recommandations, s'il y a lieu, quant aux modifications de la présente loi ou des modalités d'application de celle-ci qui seraient souhaitables.

Rapport au Parlement

Regulations

52.1 The Governor in Council may, on the recommendation of the Minister, make regulations for carrying out the purposes and provisions of this Act and, in particular, but without restricting the generality of the foregoing, may make regulations

52.1 Sur la recommandation du ministre, le gouverneur en conseil peut, par règlement, prendre les mesures nécessaires à l'application de la présente loi, notamment :

Règlements

(*a*) prescribing marine environmental quality requirements and standards;

a) établir des exigences et des normes concernant la qualité du milieu marin;

(*b*) respecting the powers and duties of persons designated by the Minister as enforcement officers; and

b) régir l'exercice des attributions conférées aux agents de l'autorité désignés par le ministre;

(*c*) respecting the implementation of provisions of agreements made under this Act.

CONDITIONAL AMENDMENTS

Bill C-25

53. If Bill C-25, introduced during the second session of the thirty-fifth Parliament and entitled *An Act respecting regulations and other documents, including the review, registration, publication and parliamentary scrutiny of regulations and other documents and to make consequential and related amendments to other Acts*, is assented to, then, on the later of the day on which section 27 of that Act comes into force and the day on which this Act is assented to,

(*a*) subsection 36(2) of this Act is replaced by the following:

Exemption from *Regulations Act*

(2) An order made under this section is exempt from the regulatory process under the *Regulations Act*.

(*b*) subsection 50(3) of this Act is replaced by the following:

Reference to scrutiny committee

(3) Any fee fixed under this Act shall stand permanently referred to a committee described in section 25 of the *Regulations Act* to be scrutinized as if it were a regulation.

REPEALS

Repeal

54. The *Canadian Laws Offshore Application Act*, chapter 44 of the Statutes of Canada, 1990, is repealed.

Repeal of R.S., c. T-8

55. The *Territorial Sea and Fishing Zones Act* is repealed.

RELATED AMENDMENTS

R.S., c. A-2

Aeronautics Act

56. The definition "Canada" in subsection 3(1) of the *Aeronautics Act* is repealed.

c) mettre en oeuvre les dispositions des accords conclus en vertu de la présente loi.

MODIFICATIONS CONDITIONNELLES

Projet de loi C-25

53. En cas de sanction du projet de loi C-25, déposé au cours de la deuxième session de la trente-cinquième législature et intitulé *Loi concernant les règlements et autres textes, y compris leur examen, enregistrement, publication et contrôle parlementaire, et modifiant certaines lois en conséquence*, à l'entrée en vigueur de l'article 27 de ce projet de loi ou à celle de la présente loi, la dernière en date étant retenue :

***a*) le paragraphe 36(2) de la présente loi est remplacé par ce qui suit :**

Dérogation à la *Loi sur les règlements*

(2) Le décret est soustrait au processus réglementaire prévu par la *Loi sur les règlements*.

***b*) le paragraphe 50(3) de la présente loi est remplacé par ce qui suit :**

Renvoi en comité

(3) Le comité visé à l'article 25 de la *Loi sur les règlements* est saisi d'office des prix fixés dans le cadre de la présente loi pour que ceux-ci fassent l'objet de l'étude et du contrôle prévus pour les règlements.

ABROGATIONS

Abrogation

54. La *Loi sur l'application extracôtière des lois canadiennes*, chapitre 44 des Lois du Canada de 1990, est abrogée.

Abrogation de L.R., ch. T-8

55. La *Loi sur la mer territoriale et la zone de pêche* est abrogée.

MODIFICATIONS CORRÉLATIVES

L.R., ch. A-2

Loi sur l'aéronautique

56. La définition de « Canada », au paragraphe 3(1) de la *Loi sur l'aéronautique*, est abrogée.

991, c. 11
. B-9.01]

Broadcasting Act

57. Paragraph 4(2)(*c*) of the *Broadcasting Act* is replaced by the following:

(*c*) any platform, rig, structure or formation that is affixed or attached to land situated in the continental shelf of Canada.

Loi sur la radiodiffusion

1991, ch. 11
[ch. B-9.01]

57. L'alinéa 4(2)*c*) de la *Loi sur la radiodiffusion* est remplacé par ce qui suit :

c) d'une plate-forme, installation, construction ou formation fixée au plateau continental du Canada.

.S., c. 36
nd Supp.)
. C-8.5]

Canada Petroleum Resources Act

58. Paragraph (*b*) of the definition "frontier lands" in section 2 of the *Canada Petroleum Resources Act* is replaced by the following:

(*b*) submarine areas, not within a province, in the internal waters of Canada, the territorial sea of Canada or the continental shelf of Canada;

Loi fédérale sur les hydrocarbures

L.R., ch. 36
(2e suppl.)
[ch. C-8.5]

58. L'alinéa *b*) de la définition de « terres domaniales », à l'article 2 de la *Loi fédérale sur les hydrocarbures*, est remplacé par ce qui suit :

b) soit dans les zones sous-marines non comprises dans le territoire d'une province, et faisant partie des eaux intérieures, de la mer territoriale ou du plateau continental du Canada.

S., c. C-9

Canada Ports Corporation Act

59. The portion of subsection 43(1) of the *Canada Ports Corporation Act* before paragraph (*a*) is replaced by the following:

Loi sur la Société canadienne des ports

L.R., ch. C-9

59. Le passage du paragraphe 43(1) de la *Loi sur la Société canadienne des ports* précédant l'alinéa *a*) est remplacé par ce qui suit :

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ssels

43. (1) The Corporation may, as provided in section 46, seize any vessel in Canadian waters in any case

Saisie de navires

43. (1) La Société peut, selon les modalités prévues à l'article 46, saisir un navire dans les limites des eaux canadiennes dans les cas suivants :

60. The portion of subsection 17(1) of Schedule I to the Act before paragraph (*a*) is replaced by the following:

17. (1) A local port corporation may, as provided in section 20 of this Schedule, seize any vessel in Canadian waters in any case

60. Le passage du paragraphe 17(1) de l'annexe I de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

17. (1) La société portuaire locale peut, selon les modalités prévues à l'article 20 de la présente annexe, saisir un navire dans les limites des eaux canadiennes dans les cas suivants :

12, c. 37
C-15.2]

Canadian Environmental Assessment Act

61. Paragraph (*b*) of the definition "federal lands" in subsection 2(1) of the *Canadian Environmental Assessment Act* is replaced by the following:

(*b*) the following lands and areas, namely,

(i) the internal waters of Canada,

(ii) the territorial sea of Canada,

Loi canadienne sur l'évaluation environnementale

1992, ch. 37
[ch. C-15.2]

61. L'alinéa *b*) de la définition de « territoire domanial », au paragraphe 2(1) de la *Loi canadienne sur l'évaluation environnementale*, est remplacé par ce qui suit :

b) les eaux intérieures, la mer territoriale, la zone économique exclusive et le plateau continental du Canada;

(iii) the exclusive economic zone of Canada, and

(iv) the continental shelf of Canada, and

R.S., c. 16 (4th Supp.) [c. C-15.3]

Canadian Environmental Protection Act

1992, c. 37, s. 77

62. Paragraph (*b*) of the definition "federal lands" in section 52 of the *Canadian Environmental Protection Act* is replaced by the following:

(*b*) the following lands and areas, namely,

(i) the internal waters of Canada,

(ii) the territorial sea of Canada,

(iii) the exclusive economic zone of Canada, and

(iv) the continental shelf of Canada, and

63. Paragraphs 66(2)(*c*) and (*d*) of the Act are replaced by the following:

(*d*) the exclusive economic zone of Canada;

1989, c. 3 [c. C-23.4]

Canadian Transportation Accident Investigation and Safety Board Act

64. (1) Paragraph 3(1)(*a*) of the *Canadian Transportation Accident Investigation and Safety Board Act* is replaced by the following:

(*a*) in or over Canada;

(2) Paragraph 3(2)(*a*) of the Act is replaced by the following:

(*a*) in Canada; and

L.R., ch. 16 (4e suppl.) [ch. C-15.3]

Loi canadienne sur la protection de l'environnement

1992, ch. 37, art. 77

62. L'alinéa *b*) de la définition de « territoire domanial », à l'article 52 de la *Loi canadienne sur la protection de l'environnement*, est remplacé par ce qui suit :

b) les eaux intérieures, la mer territoriale, la zone économique exclusive et le plateau continental du Canada;

63. Les alinéas 66(2)*c*) et *d*) de la même loi sont remplacés par ce qui suit :

d) la zone économique exclusive du Canada;

1989, ch. 3 [ch. C-23.4]

Loi sur le Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports

64. (1) L'alinéa 3(1)*a*) de la *Loi sur le Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports* est remplacé par ce qui suit :

a) en territoire canadien ou dans l'espace aérien correspondant;

(2) Le paragraphe 3(2) de la même loi est remplacé par ce qui suit :

Application : accident maritime

(2) La présente loi s'applique à tout accident maritime survenu en territoire canadien. Elle s'applique de plus à tout accident maritime survenu en tout autre lieu — y compris la zone visée au paragraphe (3) — lorsque soit une autorité compétente a présenté une demande d'enquête au Canada, soit est en cause un navire immatriculé ou muni d'un permis au Canada, soit un témoin de l'accident, habile à témoigner, ou une personne en possession de renseignements concernant un facteur possi-

ble de celui-ci arrive ou est trouvé quelque part au Canada.

(3) Subsection 3(3) of the Act is replaced by the following:

(3) Le paragraphe 3(3) de la même loi est remplacé par ce qui suit :

Application

(3) This Act also applies in respect of marine occurrences related to an activity concerning the exploration or exploitation of the continental shelf of Canada, where the marine occurrence takes place in waters above the continental shelf of Canada.

Plateau continental

(3) La présente loi s'applique aussi à tout accident maritime lié à une activité d'exploration ou d'exploitation du plateau continental canadien et survenu dans les eaux surjacentes.

(4) Paragraph 3(4)(*a*) of the Act is replaced by the following:

(4) Le paragraphe 3(4) de la même loi est remplacé par ce qui suit :

(*a*) in Canada, if the railway or commodity pipeline is within the legislative authority of Parliament; and

Application : accident ferroviaire ou de productoduc

(4) La présente loi s'applique à tout accident ferroviaire ou de productoduc survenu soit en territoire canadien lorsque est en cause un chemin de fer ou un productoduc de compétence fédérale, soit en tout autre lieu lorsqu'une autorité compétente a présenté une demande d'enquête au Canada.

(5) Subsection 3(5) of the Act is repealed.

(5) Le paragraphe 3(5) de la même loi est abrogé.

S., c. C-33

Coastal Fisheries Protection Act

Loi sur la protection des pêches côtières

L.R., ch. C-33

1990, c. 44, 13

65. Subsections 4(2) and (3) of the *Coastal Fisheries Protection Act* are replaced by the following:

65. Les paragraphes 4(2) et (3) de la *Loi sur la protection des pêches côtières* sont remplacés par ce qui suit :

1990, ch. 44, art. 13

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(2) No person, being aboard a foreign fishing vessel or being a member of the crew of or attached to or employed on a foreign fishing vessel, shall fish or prepare to fish for a sedentary species of fish in any portion of the continental shelf of Canada that is beyond the limits of Canadian fisheries waters, unless authorized by this Act or the regulations or any other law of Canada.

Espèces sédentaires

(2) Sauf autorisation prévue par la présente loi ou ses règlements ou une autre loi canadienne, il est interdit aux personnes se trouvant à bord d'un bateau de pêche étranger, ou qui y sont affectées ou employées, ou qui font partie de son équipage, de pêcher ou de se préparer à pêcher toute espèce sédentaire de poisson en quelque partie du plateau continental canadien située au-delà des eaux de pêche canadiennes.

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(3) For the purposes of subsection (2), "sedentary species" means any living organism that, at the harvestable stage, either is immobile on or under the seabed or is unable to move except in constant physical contact with the seabed or subsoil.

Définition de « espèce sédentaire »

(3) Pour l'application du paragraphe (2), « espèce sédentaire » s'entend des organismes qui, au stade où ils peuvent être pêchés, sont soit immobiles sur le fond de la mer ou dans le sous-sol marin, soit incapables de se déplacer autrement qu'en restant constamment en contact avec ce fond ou ce sous-sol.

1992, c. 31 [c. C-33.3]

Coasting Trade Act

66. (1) The definition "continental shelf" in subsection 2(1) of the *Coasting Trade Act* is repealed.

(2) The definition "Canadian waters" in subsection 2(1) of the Act is replaced by the following:

"Canadian waters" *« eaux canadiennes »*

"Canadian waters" means the inland waters within the meaning of section 2 of the *Customs Act*, the internal waters of Canada and the territorial sea of Canada;

R.S., c. C-46

Criminal Code

1990, c. 44, s. 15

67. Subsection 477(1) of the *Criminal Code* is replaced by the following:

Definition of "ship"

477. (1) In sections 477.1 to 477.4, "ship" includes any description of vessel, boat or craft designed, used or capable of being used solely or partly for marine navigation, without regard to method or lack of propulsion.

1990, c. 44, s. 15

68. Section 477.1 of the Act is replaced by the following:

Offences outside of Canada

477.1 Every person who commits an act or omission that, if it occurred in Canada, would be an offence under a federal law, within the meaning of section 2 of the *Oceans Act*, is deemed to have committed that act or omission in Canada if it is an act or omission

(*a*) in the exclusive economic zone of Canada that

(i) is committed by a person who is in the exclusive economic zone of Canada in connection with exploring or exploiting, conserving or managing the natural resources, whether living or non-living, of the exclusive economic zone of Canada, and

(ii) is committed by or in relation to a person who is a Canadian citizen or a permanent resident within the meaning of the *Immigration Act*;

(*b*) that is committed in a place in or above the continental shelf of Canada and that is an offence in that place by virtue of section 20 of the *Oceans Act*;

1992, ch. 31 [ch. C-33.3]

Loi sur le cabotage

66. (1) La définition de « plateau continental », au paragraphe 2(1) de la *Loi sur le cabotage*, est abrogée.

(2) La définition de « eaux canadiennes », au paragraphe 2(1) de la même loi, est remplacée par ce qui suit :

« eaux canadiennes » "Canadian waters"

« eaux canadiennes » Les eaux internes au sens de l'article 2 de la *Loi sur les douanes*, les eaux intérieures et la mer territoriale du Canada.

L.R., ch. C-46

Code criminel

1990, ch. 44, art. 15

67. Le paragraphe 477(1) du *Code criminel* est remplacé par ce qui suit :

Définition de « navire »

477. (1) Aux articles 477.1 à 477.4, « navire » s'entend de tout genre de bâtiment, bateau ou embarcation conçu, utilisé ou utilisable, exclusivement ou non, pour la navigation maritime, autopropulsé ou non et indépendamment de son mode de propulsion.

1990, ch. 44, art. 15

68. L'article 477.1 de la même loi est remplacé par ce qui suit :

Infraction commise à l'extérieur du Canada

477.1 Le fait — acte ou omission — qui, survenu au Canada, constituerait une infraction au droit fédéral — au sens de l'article 2 de la *Loi sur les océans* — est réputé y avoir été commis s'il est survenu :

a) dans la zone économique exclusive du Canada et que :

(i) d'une part, son auteur s'y trouvait aux fins d'exploration ou d'exploitation, de conservation ou de gestion des ressources naturelles, biologiques ou non,

(ii) d'autre part, il vise un citoyen canadien ou un résident permanent au sens de la *Loi sur l'immigration*;

b) dans un lieu situé sur le plateau continental du Canada ou dans l'espace marin ou aérien correspondant et constitue une infraction dans ce lieu par application de l'article 20 de la *Loi sur les océans*;

c) à l'extérieur du Canada, à bord ou au moyen d'un navire immatriculé ou auquel un permis ou un numéro d'enregistrement a été accordé sous le régime d'une loi fédérale:

(*c*) that is committed outside Canada on board or by means of a ship registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;

(*d*) that is committed outside Canada in the course of hot pursuit; or

(*e*) that is committed outside the territory of any state by a Canadian citizen.

d) à l'extérieur du Canada, lors d'une poursuite immédiate;

e) à l'extérieur du territoire de tout État si son auteur est citoyen canadien.

1994, c. 44, s. 32

69. (1) Subsection 477.2(1) of the Act is replaced by the following:

69. (1) Le paragraphe 477.2(1) de la même loi est remplacé par ce qui suit :

1994, ch. 44, art. 32

Consent of Attorney General of Canada

477.2 (1) No proceedings in respect of an offence committed in or on the territorial sea of Canada shall be continued unless the consent of the Attorney General of Canada is obtained not later than eight days after the proceedings are commenced, if the accused is not a Canadian citizen and the offence is alleged to have been committed on board any ship registered outside Canada.

477.2 (1) Il est mis fin aux poursuites relatives à toute infraction présumée avoir été commise, dans les limites de la mer territoriale du Canada à bord d'un navire immatriculé à l'extérieur du Canada, par une personne n'ayant pas la citoyenneté canadienne, à moins que le procureur général du Canada n'ait donné son consentement au plus tard huit jours après qu'elles ont été intentées.

Consentement du procureur général

1994, c. 44, s. 32

(2) Subsections 477.2(2) and (3) of the Act are replaced by the following:

(2) Les paragraphes 477.2(2) et (3) de la même loi sont remplacés par ce qui suit :

1994, ch. 44, art. 32

Consent of Attorney General of Canada

(2) No proceedings in respect of which courts have jurisdiction by virtue only of paragraph 477.1(*a*) or (*b*) shall be continued unless the consent of the Attorney General of Canada is obtained not later than eight days after the proceedings are commenced, if the accused is not a Canadian citizen and the offence is alleged to have been committed on board any ship registered outside Canada.

(2) Il est mis fin aux poursuites relatives à une infraction qui, d'une part, est présumée avoir été commise à bord d'un navire immatriculé à l'extérieur du Canada par une personne n'ayant pas la citoyenneté canadienne et qui, d'autre part, ne ressortit aux tribunaux que par application des alinéas 477.1*a*) ou *b*), à moins que le procureur général du Canada n'ait donné son consentement au plus tard huit jours après qu'elles ont été intentées.

Consentement du procureur général

Consent of Attorney General of Canada

(3) No proceedings in respect of which courts have jurisdiction by virtue only of paragraph 477.1(*d*) or (*e*) shall be continued unless the consent of the Attorney General of Canada is obtained not later than eight days after the proceedings are commenced.

(3) Il est mis fin aux poursuites relatives à une infraction qui ne ressortit aux tribunaux que par application des alinéas 477.1*d*) ou *e*), à moins que le procureur général du Canada n'ait donné son consentement au plus tard huit jours après qu'elles ont été intentées.

Consentement du procureur général

1990, c. 44, s. 15

70. (1) The portion of subsection 477.3(1) of the Act before paragraph (*b*) is replaced by the following:

70. (1) Le passage du paragraphe 477.3(1) de la même loi précédant l'alinéa *b*) est remplacé par ce qui suit :

1990, ch. 44, art. 15

Exercising powers of arrest, entry, etc.

477.3 (1) Every power of arrest, entry, search or seizure or other power that could be exercised in Canada in respect of an act or omission referred to in section 477.1 may be exercised, in the circumstances referred to in that section,

477.3 (1) Tous les pouvoirs — notamment ceux d'arrestation, d'accès à des lieux, de perquisition, de fouille et de saisie — qui peuvent être exercés au Canada à l'égard d'un fait visé à l'article 477.1 peuvent l'être à cet égard et dans les circonstances mentionnées à cet article :

Exercice de pouvoirs d'arrestation, d'accès à des lieux, etc.

(*a*) at the place or on board the ship or marine installation or structure, within the meaning of section 2 of the *Oceans Act*, where the act or omission occurred; or

a) à l'endroit ou à bord du navire ou de l'ouvrage en mer — au sens de l'article 2 de la *Loi sur les océans* — où le fait est survenu;

1990, c. 44, s. 15

(2) Subsections 477.3(2) and (3) of the Act are replaced by the following:

(2) Les paragraphes 477.3(2) et (3) de la même loi sont remplacés par ce qui suit :

1990, ch. 44, art. 15

Arrest, search, seizure, etc.

(2) A justice or judge in any territorial division in Canada has jurisdiction to authorize an arrest, entry, search or seizure or an investigation or other ancillary matter related to an offence

(*a*) committed in or on the territorial sea of Canada or any area of the sea that forms part of the internal waters of Canada, or

(*b*) referred to in section 477.1

in the same manner as if the offence had been committed in that territorial division.

Pouvoirs des tribunaux

(2) Un juge de paix ou un juge de toute circonscription territoriale au Canada a compétence pour autoriser les mesures d'enquête et autres mesures accessoires — notamment en matière d'arrestation, d'accès à des lieux, de perquisition, de fouille et de saisie — à l'égard d'une infraction soit visée à l'article 477.1, soit commise dans les limites de la mer territoriale du Canada ou dans un espace maritime faisant partie des eaux intérieures du Canada, comme si elle avait été perpétrée dans son ressort ordinaire.

Limitation

(3) Where an act or omission that is an offence by virtue only of section 477.1 is alleged to have been committed on board any ship registered outside Canada, the powers referred to in subsection (1) shall not be exercised outside Canada with respect to that act or omission without the consent of the Attorney General of Canada.

Réserve

(3) Dans le cas où un fait qui ne constitue une infraction que par application de l'article 477.1 est présumé survenu à bord d'un navire immatriculé à l'extérieur du Canada, les pouvoirs mentionnés au paragraphe (1) ne peuvent être exercés à l'extérieur du Canada à l'égard de ce fait sans le consentement du procureur général du Canada.

1990, c. 44, s. 15

71. (1) Subsections 477.4(1) and (2) of the Act are repealed.

71. (1) Les paragraphes 477.4(1) et (2) de la même loi sont abrogés.

1990, ch. 44, art. 15

1990, c. 44, s. 15; 1995, c. 5, par. 25(1)(g)

(2) Paragraphs 477.4(3)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) a certificate referred to in subsection 23(1) of the *Oceans Act*, or

(*b*) a certificate issued by or under the authority of the Minister of Foreign Affairs containing a statement that any geographical location specified in the certificate was, at any time material to the proceedings, in an area of a fishing zone of Canada that is not within the internal waters of Canada or the territorial sea of Canada or outside the territory of any state,

(2) Les alinéas 477.4(3)*a*) et *b*) de la même loi sont remplacés par ce qui suit :

a) visé au paragraphe 23(1) de la *Loi sur les océans*;

b) délivré sous l'autorité du ministre des Affaires étrangères et attestant qu'un lieu se trouvait à un moment donné soit dans une partie d'une zone de pêche non comprise dans les eaux intérieures ou la mer territoriale du Canada, soit à l'extérieur de tout État.

1990, ch. 44, art. 15; 1995, ch. 5, al. 25(1)g)

72. The Act is amended by adding the following after section 481:

72. La même loi est modifiée par adjonction, après l'article 481, de ce qui suit :

Offence in Canadian waters

481.1 Where an offence is committed in or on the territorial sea of Canada or any area of the sea that forms part of the internal waters of Canada, proceedings in respect thereof may, whether or not the accused is in Canada, be commenced and an accused may be charged, tried and punished within any territorial division in Canada in the same manner as if the offence had been committed in that territorial division.

Infraction commise dans les eaux canadiennes

481.1 L'infraction commise dans les limites de la mer territoriale du Canada ou de tout espace maritime faisant partie des eaux intérieures du Canada peut être poursuivie, jugée et punie dans toute circonscription territoriale du Canada comme si l'infraction avait été commise dans cette circonscription, que l'accusé soit présent ou non au Canada.

Offence outside Canada

481.2 Subject to this or any other Act of Parliament, where an act or omission is committed outside Canada and the act or omission, when committed in those circumstances, is an offence under this or any other Act of Parliament, proceedings in respect thereof may, whether or not the accused is in Canada, be commenced, and an accused may be charged, tried and punished within any territorial division in Canada in the same manner as if the offence had been committed in that territorial division.

Infraction commise à l'extérieur du Canada

481.2 Sous réserve des autres dispositions de la présente loi et de toute autre loi fédérale, le fait — acte ou omission — survenu à l'extérieur du Canada et constituant, même dans ce cas, une infraction à la présente loi ou à une autre loi fédérale peut être poursuivi, jugé et puni dans toute circonscription territoriale du Canada comme si le fait était survenu au Canada, que l'accusé soit présent ou non au Canada.

Appearance of accused at trial

481.3 For greater certainty, the provisions of this Act relating to

(*a*) the requirement of the appearance of an accused at proceedings, and

(*b*) the exceptions to that requirement

apply to proceedings commenced in any territorial division pursuant to section 481, 481.1 or 481.2.

Comparution de l'accusé au procès

481.3 Il est entendu que les dispositions de la présente loi qui régissent la comparution de l'accusé dans le cadre des procédures le concernant s'appliquent aux poursuites visées par les articles 481, 481.1 et 481.2.

S., c. 1 (2nd Supp.) [c. 52.6]

Customs Act

R.S., ch. 1 (2e suppl.) [ch. C-52.6]

Loi sur les douanes

73. (1) The definitions "Canada", "internal waters" and "territorial sea" in subsection 2(1) of the *Customs Act* are repealed.

73. (1) Les définitions de « Canada », « eaux intérieures » et « mer territoriale », au paragraphe 2(1) de la *Loi sur les douanes*, sont abrogées.

(2) Subsection 2(2) of the Act is replaced by the following:

(2) Le paragraphe 2(2) de la même loi est remplacé par ce qui suit :

Restriction of Canadian waters

(2) The Governor in Council may from time to time by regulation temporarily restrict, for the purposes of this Act, the extent of Canadian waters, including the inland waters, but no such regulation shall be construed as foregoing any Canadian rights in respect of waters so restricted.

Exclusion de certaines zones

(2) Le gouverneur en conseil peut par règlement, à titre temporaire, soustraire à l'application de la présente loi des zones déterminées des eaux canadiennes, y compris les eaux internes; le cas échéant, un tel règlement n'emporte aucune renonciation aux droits souverains du Canada sur les zones ainsi soustraites.

74. Subsection 11(5) of the Act is replaced by the following:

74. Le paragraphe 11(5) de la même loi est remplacé par ce qui suit :

Exception

(5) Subsections (1) and (3) do not apply to any person who enters Canadian waters, including the inland waters, or the airspace over Canada while proceeding directly from one place outside Canada to another place outside Canada unless an officer requires that person to comply with those subsections.

75. Subsection 12(5) of the Act is replaced by the following:

Exception

(5) This section does not apply in respect of goods on board a conveyance that enters Canadian waters, including the inland waters, or the airspace over Canada while proceeding directly from one place outside Canada to another place outside Canada unless an officer otherwise requires.

R.S., c. C-53

Customs and Excise Offshore Application Act

R.S., c. 1 (2nd Supp.), s. 213(3) (Sch. III, item 2)

76. (1) The definitions "continental shelf", "internal waters" and "territorial sea" in subsection 2(1) of the *Customs and Excise Offshore Application Act* are repealed.

(2) Subsection 2(3) of the Act is repealed.

77. Paragraphs 7(*a*) to (*c*) of the Act are replaced by the following:

(*a*) within the limits of the continental shelf of Canada, or

(*b*) in Canadian waters, including the inland waters within the meaning of section 2 of the *Customs Act*,

R.S., c. 41 (3rd Supp.) [c. C-54.01]

Customs Tariff

78. Section 9 of the *Customs Tariff* is replaced by the following:

Restriction of Canadian waters

9. For greater certainty, any regulation made pursuant to subsection 2(2) of the *Customs Act* applies so as to temporarily restrict, for the purposes of this Act, the extent of Canadian waters, including the inland waters.

(5) Les paragraphes (1) et (3) ne s'appliquent qu'à la demande de l'agent aux personnes qui se rendent directement d'un lieu à un autre de l'extérieur du Canada en passant par les eaux canadiennes, y compris les eaux internes, ou l'espace aérien du Canada.

Exception : transit

75. Le paragraphe 12(5) de la même loi est remplacé par ce qui suit :

(5) Le présent article ne s'applique qu'à la demande de l'agent aux marchandises se trouvant à bord d'un moyen de transport qui se rend directement d'un lieu à un autre de l'extérieur du Canada en passant par les eaux canadiennes, y compris les eaux internes, ou l'espace aérien du Canada.

Exception : transit

L.R., ch. C-53

Loi sur la compétence extracôtière du Canada pour les douanes et l'accise

L.R., ch. 1 (2e suppl.), par. 213(3), ann. III, nº 2

76. (1) Les définitions de « eaux intérieures », « mer territoriale » et « plateau continental », au paragraphe 2(1) de la *Loi sur la compétence extracôtière du Canada pour les douanes et l'accise*, sont abrogées.

(2) Le paragraphe 2(3) de la même loi est abrogé.

77. Les alinéas 7*a*) à *c*) de la même loi sont remplacés par ce qui suit :

a) soit dans les limites du plateau continental canadien;

b) soit dans les eaux canadiennes, y compris les eaux internes au sens de l'article 2 de la *Loi sur les douanes*.

L.R., ch. 41 (3e suppl.) [ch. C-54.01]

Tarif des douanes

78. L'article 9 du *Tarif des douanes* est remplacé par ce qui suit :

Zones soustraites des eaux canadiennes

9. Il est entendu que le règlement pris en vertu du paragraphe 2(2) de la *Loi sur les douanes* s'applique de manière à soustraire temporairement, pour l'application de la présente loi, des zones déterminées des eaux canadiennes — y compris les eaux internes — à l'application de cette loi.

R.S., c. E-6 *Energy Administration Act*

79. The definition "offshore area" in section 20 of the *Energy Administration Act* is replaced by the following:

"offshore area" means Sable Island or any area of land not within a province that belongs to Her Majesty in right of Canada or in respect of which Her Majesty in right of Canada has the right to dispose of or exploit the natural resources and that is situated in submarine areas in the internal waters of Canada, the territorial sea of Canada or the continental shelf of Canada;

"offshore area" *zone extracôtière »*

S., c. E-8 *Energy Monitoring Act*

80. The definition "Canada" in subsection 2(1) of the *Energy Monitoring Act* is replaced by the following:

"Canada" includes the continental shelf of Canada;

anada" *Canada »*

S., c. E-15 *Excise Tax Act*

S., c. 7 (2nd pp.), s. (1)

81. Paragraph 70(1)(*d*) of the *Excise Tax Act* is replaced by the following:

(*d*) goods delivered to telegraph cable ships proceeding on an ocean voyage for use in laying or repairing oceanic telegraph cables outside Canadian waters.

S., c. F-7 *Federal Court Act*

82. Paragraph 22(3)(*c*) of the *Federal Court Act* is replaced by the following:

(*c*) in relation to all claims, whether arising on the high seas, in Canadian waters or elsewhere and whether those waters are naturally navigable or artificially made so, including, without restricting the generality of the foregoing, in the case of salvage, claims in respect of cargo or wreck found on the shores of those waters; and

83. Paragraph 43(4)(*b*) of the Act is replaced by the following:

(*b*) the cause of action arose in Canadian waters; or

84. Subsection 55(1) of the Act is replaced by the following:

Loi sur l'administration de l'énergie L.R., ch. E-6

79. La définition de « zone extracôtière », à l'article 20 de la *Loi sur l'administration de l'énergie*, est remplacée par ce qui suit :

« zone extracôtière » L'île de Sable ou toute étendue de terre, hors des limites d'une province, qui appartient à Sa Majesté du chef du Canada ou dont celle-ci a le droit d'aliéner ou d'exploiter les ressources naturelles et qui est située dans les zones sous-marines faisant partie des eaux intérieures, de la mer territoriale ou du plateau continental du Canada.

« zone extracôtière » *"offshore area"*

Loi sur la surveillance du secteur énergétique L.R., ch. E-8

80. La définition de « Canada », au paragraphe 2(1) de la *Loi sur la surveillance du secteur énergétique*, est remplacée par ce qui suit :

« Canada » Fait notamment partie du territoire du Canada le plateau continental de celui-ci.

« Canada » *"Canada"*

Loi sur la taxe d'accise L.R., ch. E-15

L.R., ch. 7 (2e suppl.), par. 34(1)

81. L'alinéa 70(1)*d*) de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :

d) livrées aux navires poseurs de câbles télégraphiques en voyage océanique et devant servir à la pose ou à la réparation de câbles télégraphiques océaniques hors des eaux canadiennes.

Loi sur la Cour fédérale L.R., ch. F-7

82. L'alinéa 22(3)*c*) de la *Loi sur la Cour fédérale* est remplacé par ce qui suit :

c) à toutes les demandes, que les faits y donnant lieu se soient produits en haute mer ou dans les eaux canadiennes ou ailleurs et que ces eaux soient naturellement ou artificiellement navigables, et notamment, dans le cas de sauvetage, aux demandes relatives aux cargaisons ou épaves trouvées sur les rives de ces eaux;

83. L'alinéa 43(4)*b*) de la même loi est remplacé par ce qui suit :

b) soit que le fait générateur soit survenu dans les eaux canadiennes;

84. Le paragraphe 55(1) de la même loi est remplacé par ce qui suit :

Application of process

55. (1) The process of the Court runs throughout Canada and any other place to which legislation enacted by Parliament has been made applicable.

Champ d'application

55. (1) Les moyens de contrainte de la Cour sont exécutoires dans tout le Canada et en tout autre lieu où s'applique la législation fédérale.

R.S., c. F-28

Foreign Enlistment Act

Loi sur l'enrôlement à l'étranger

L.R., ch. F-28

R.S., c. 1 (2nd Supp.), s. 213(1) (Sch. I, item 6)

85. The definition "within Canada" in section 2 of the *Foreign Enlistment Act* is repealed.

85. La définition de « dans les limites du Canada », à l'article 2 de la *Loi sur l'enrôlement à l'étranger*, est abrogée.

L.R., ch. 1 (2e suppl.), par. 213(1), ann. I, nº 6

R.S., c. I-21

Interpretation Act

Loi d'interprétation

L.R., ch. I-21

86. Section 8 of the *Interpretation Act* is amended by adding the following after subsection (2):

86. L'article 8 de la *Loi d'interprétation* est modifié par adjonction, après le paragraphe (2), de ce qui suit :

Exclusive economic zone of Canada

(2.1) Every enactment that applies in respect of exploring or exploiting, conserving or managing natural resources, whether living or non-living, applies, in addition to its application to Canada, to the exclusive economic zone of Canada, unless a contrary intention is expressed in the enactment.

Zone économique exclusive du Canada

(2.1) Le texte applicable, au Canada, à l'exploration et à l'exploitation, la conservation et la gestion des ressources naturelles biologiques ou non biologiques s'applique également, à moins que le contexte n'exprime une intention différente, à la zone économique exclusive du Canada.

Continental shelf of Canada

(2.2) Every enactment that applies in respect of exploring or exploiting natural resources that are

(*a*) mineral or other non-living resources of the seabed or subsoil, or

(*b*) living organisms belonging to sedentary species, that is to say, organisms that, 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 subsoil

applies, in addition to its application to Canada, to the continental shelf of Canada, unless a contrary intention is expressed in the enactment.

Plateau continental du Canada

(2.2) S'applique également au plateau continental du Canada, à moins que le contexte n'exprime une intention différente, le texte applicable, au Canada, à l'exploration et à l'exploitation :

a) des ressources minérales et autres ressources naturelles non biologiques des fonds marins et de leur sous-sol;

b) des organismes vivants qui appartiennent aux espèces sédentaires, c'est-à-dire les organismes qui, au stade où ils peuvent être pêchés, sont soit immobiles sur le fond ou au-dessous du fond, soit incapables de se déplacer autrement qu'en restant constamment en contact avec le fond ou le sous-sol.

87. Subsection 35(1) of the Act is amended by adding the following in alphabetical order:

87. Le paragraphe 35(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

"Canada" « *Canada* »

"Canada", for greater certainty, includes the internal waters of Canada and the territorial sea of Canada;

« Canada » Il est entendu que les eaux intérieures et la mer territoriale du Canada font partie du territoire de celui-ci.

« Canada » "*Canada*"

"Canadian waters" « *eaux canadiennes* »

"Canadian waters" includes the territorial sea of Canada and the internal waters of Canada;

« eaux canadiennes » Notamment la mer territoriale et les eaux intérieures du Canada.

« eaux canadiennes » "*Canadian waters*"

contiguous one" *zone ntiguë »*

"contiguous zone",

(*a*) in relation to Canada, means the contiguous zone of Canada as determined under the *Oceans Act*, and

(*b*) in relation to any other state, means the contiguous zone of the other state as determined in accordance with international law and the domestic laws of that other state;

continental elf" *plateau ntinental »*

"continental shelf",

(*a*) in relation to Canada, means the continental shelf of Canada as determined under the *Oceans Act*, and

(*b*) in relation to any other state, means the continental shelf of the other state as determined in accordance with international law and the domestic laws of that other state;

exclusive onomic one" *zone conomique clusive »*

"exclusive economic zone",

(*a*) in relation to Canada, means the exclusive economic zone of Canada as determined under the *Oceans Act* and includes the seabed and subsoil below that zone, and

(*b*) in relation to any other state, means the exclusive economic zone of the other state as determined in accordance with international law and the domestic laws of that other state;

nternal aters" *eaux térieures »*

"internal waters",

(*a*) in relation to Canada, means the internal waters of Canada as determined under the *Oceans Act* and includes the airspace above and the bed and subsoil below those waters, and

(*b*) in relation to any other state, means the waters on the landward side of the baselines of the territorial sea of the other state;

« eaux intérieures »

a) S'agissant du Canada, les eaux intérieures délimitées en conformité avec la *Loi sur les océans*, y compris leur fond ou leur lit, ainsi que leur sous-sol et l'espace aérien correspondant;

b) s'agissant de tout autre État, les eaux situées en deçà de la ligne de base de la mer territoriale de cet État.

« eaux intérieures » *"internal waters"*

« mer territoriale »

a) S'agissant du Canada, la mer territoriale délimitée en conformité avec la *Loi sur les océans*, y compris les fonds marins et leur sous-sol, ainsi que l'espace aérien correspondant;

b) s'agissant de tout autre État, la mer territoriale de cet État, délimitée en conformité avec le droit international et le droit interne de ce même État.

« mer territoriale » *"territorial sea"*

« plateau continental »

a) S'agissant du Canada, le plateau continental délimité en conformité avec la *Loi sur les océans*;

b) s'agissant de tout autre État, le plateau continental de cet État, délimité en conformité avec le droit international et le droit interne de ce même État.

« plateau continental » *"continental shelf"*

« zone contiguë »

a) S'agissant du Canada, la zone contiguë délimitée en conformité avec la *Loi sur les océans*;

b) s'agissant de tout autre État, la zone contiguë de cet État, délimitée en conformité avec le droit international et le droit interne de ce même État.

« zone contiguë » *"contiguous zone"*

« zone économique exclusive »

a) S'agissant du Canada, la zone économique exclusive délimitée en conformité

« zone économique exclusive » *"exclusive economic zone"*

"territorial sea"
« *mer territoriale* »

"territorial sea",

(*a*) in relation to Canada, means the territorial sea of Canada as determined under the *Oceans Act* and includes the airspace above and the seabed and subsoil below that sea, and

(*b*) in relation to any other state, means the territorial sea of the other state as determined in accordance with international law and the domestic laws of that other state;

avec la *Loi sur les océans*, y compris les fonds marins et leur sous-sol;

b) s'agissant de tout autre État, la zone économique exclusive de cet État, délimitée en conformité avec le droit international et le droit interne de ce même État.

R.S., c. 28 (1st Supp.) [c. I-21.8]

Investment Canada Act

Loi sur Investissement Canada

L.R., ch. 28 (1er suppl.) [ch. I-21.8]

88. The definition "Canada" in section 3 of the *Investment Canada Act* is replaced by the following:

88. La définition de « Canada », à l'article 3 de la *Loi sur Investissement Canada*, est remplacée par ce qui suit :

"Canada"
« *Canada* »

"Canada" includes the exclusive economic zone of Canada and the continental shelf of Canada;

« Canada » Font notamment partie du territoire du Canada la zone économique exclusive et le plateau continental de celui-ci.

« Canada »
"*Canada*"

R.S., c. L-2

Canada Labour Code

Code canadien du travail

L.R., ch. L-2

1990, c. 44, s. 17

89. Paragraph (*j*) of the definition "federal work, undertaking or business" in section 2 of the *Canada Labour Code* is replaced by the following:

89. L'alinéa *j*) de la définition de « entreprises fédérales », à l'article 2 du *Code canadien du travail*, est remplacé par ce qui suit :

1990, ch. 44, art. 17

(*j*) a work, undertaking or activity in respect of which federal laws within the meaning of section 2 of the *Oceans Act* apply pursuant to section 20 of that Act and any regulations made pursuant to paragraph 26(1)(*k*) of that Act;

j) les entreprises auxquelles les lois fédérales, au sens de l'article 2 de la *Loi sur les océans*, s'appliquent en vertu de l'article 20 de cette loi et des règlements d'application de l'alinéa 26(1)*k*) de la même loi.

R.S., c. N-7

National Energy Board Act

Loi sur l'Office national de l'énergie

L.R., ch. N-7

90. Clause (*b*)(ii)(B) of the definition "export" in section 2 of the *National Energy Board Act* is replaced by the following:

90. La division *b*)(ii)(B) de la définition de « exportation », à l'article 2 de la *Loi sur l'Office national de l'énergie*, est remplacée par ce qui suit :

(B) to a place outside Canada from any area of land not within a province that belongs to Her Majesty in right of Canada or in respect of which Her Majesty in right of Canada has the right to dispose of or exploit the natural resources and that is situated in submarine areas in the internal waters of Canada, the territorial sea of Canada or the continental shelf of Canada, or

(B) ou bien, vers l'extérieur du Canada, à partir d'une terre appartenant à Sa Majesté du chef du Canada ou dont celle-ci a le droit d'aliéner ou d'exploiter les ressources naturelles, et située dans les zones sous-marines hors provinces et faisant partie des eaux intérieures, de la mer territoriale ou du plateau continental du Canada;

91. The definition "offshore area" in section 123 of the Act is replaced by the following:

'offshore rea" *zone xtracôtière »*

"offshore area" means Sable Island or any area of land not within a province that belongs to Her Majesty in right of Canada or in respect of which Her Majesty in right of Canada has the right to dispose of or exploit the natural resources and that is situated in submarine areas in the internal waters of Canada, the territorial sea of Canada or the continental shelf of Canada.

91. La définition de « zone extracôtière », à l'article 123 de la même loi, est remplacée par ce qui suit :

« zone extracôtière » L'île de Sable ou toute étendue de terre, hors des limites d'une province, qui appartient à Sa Majesté du chef du Canada ou dont celle-ci a le droit d'aliéner ou d'exploiter les ressources naturelles et qui est située dans les zones sous-marines faisant partie des eaux intérieures, de la mer territoriale ou du plateau continental du Canada.

« zone extracôtière » *"offshore area"*

993, c. 28 : N-28.6]

Nunavut Act

92. Section 15 of Schedule III to the *Nunavut Act* and the heading before it are repealed.

Loi sur le Nunavut

92. L'article 15 de l'annexe III de la *Loi sur le Nunavut* et l'intertitre le précédant sont abrogés.

1993, ch. 28 [ch. N-28.6]

.S., c. O-7; 992, c. 35, 2

Canada Oil and Gas Operations Act

93. Paragraph 3(*b*) of the *Canada Oil and Gas Operations Act* is replaced by the following:

(*b*) submarine areas, not within a province, in the internal waters of Canada, the territorial sea of Canada or the continental shelf of Canada.

Loi sur les opérations pétrolières au Canada

93. L'alinéa 3*b*) de la *Loi sur les opérations pétrolières au Canada* est remplacé par ce qui suit :

b) les zones sous-marines non comprises dans le territoire d'une province et faisant partie des eaux intérieures, de la mer territoriale ou du plateau continental du Canada.

L.R., ch. O-7; 1992, ch. 35, art. 2

.S., c. R-2; 989, c. 17, 2

Radiocommunication Act

989, c. 17, 4

94. Paragraph 3(3)(*c*) of the *Radiocommunication Act* is replaced by the following:

(*c*) any platform, rig, structure or formation that is affixed or attached to land situated in the continental shelf of Canada.

Loi sur la radiocommunication

94. L'alinéa 3(3)*c*) de la *Loi sur la radiocommunication* est remplacé par ce qui suit :

c) d'une plate-forme, installation, construction ou formation fixée au plateau continental canadien.

L.R., ch. R-2; 1989, ch. 17, art. 2

1989, ch. 17, art. 4

.S., c. S-9

Canada Shipping Act

95. The definitions "Department" and "Minister" in section 2 of the *Canada Shipping Act* are replaced by the following:

)epartment" *ministère »*

"Department" means

(*a*) in section 385, subsection 422(2), the provisions of sections 423 to 475 respecting wrecks, Part VII and sections 562.15 to 562.2, 660.1 to 660.11 and 678, the Department of Fisheries and Oceans, and

Loi sur la marine marchande du Canada

95. Les définitions de « ministère » et « ministre », à l'article 2 de la *Loi sur la marine marchande du Canada*, sont respectivement remplacées par ce qui suit :

« ministère »

a) Pour l'application de l'article 385, du paragraphe 422(2), des dispositions des articles 423 à 475 concernant les épaves,

L.R., ch. S-9

« ministère » *"Department"*

(*b*) in any other provision, the Department of Transport;

"Minister" « *ministre* »

"Minister" means

(*a*) in section 385, subsection 422(2), the provisions of sections 423 to 475 respecting wrecks, Part VII and sections 562.15 to 562.2, 660.1 to 660.11 and 678, the Minister of Fisheries and Oceans, and

(*b*) in any other provision, the Minister of Transport;

de la partie VII et des articles 562.15 à 562.2, 660.1 à 660.11 et 678, le ministère des Pêches et des Océans;

b) pour l'application des autres dispositions de la présente loi, le ministère des Transports.

« ministre » "*Minister*"

« ministre »

a) Pour l'application de l'article 385, du paragraphe 422(2), des dispositions des articles 423 à 475 concernant les épaves, de la partie VII et des articles 562.15 à 562.2, 660.1 à 660.11 et 678, le ministre des Pêches et des Océans;

b) pour l'application des autres dispositions de la présente loi, le ministre des Transports.

1989, c. 3, s. 53

96. Section 422 of the Act is replaced by the following:

96. L'article 422 de la même loi est remplacé par ce qui suit :

1989, ch. 3, art. 53

Superintendence — Minister of Transport

422. (1) The Minister has throughout Canada the general superintendence of all matters relating to salvage and, subject to the *Canadian Transportation Accident Investigation and Safety Board Act*, shipping casualties.

422. (1) Sur toute l'étendue du Canada, le ministre exerce la surintendance générale de tout ce qui se rapporte au sauvetage et, sous réserve de la *Loi sur le Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports*, aux sinistres maritimes.

Surintendance : ministre des Transports

Superintendence — Minister of Fisheries and Oceans

(2) The Minister of Fisheries and Oceans has throughout Canada the general superintendence of all matters relating to wrecks and receivers of wrecks.

(2) Le ministre des Pêches et des Océans exerce, sur toute l'étendue du Canada, la surintendance générale de tout ce qui se rapporte aux épaves et aux receveurs d'épaves.

Surintendance : ministre des Pêches et des Océans

R.S., c. 6 (3rd Supp.), s. 78

97. (1) Subsection 562.1(2) of the Act is replaced by the following:

97. (1) Le paragraphe 562.1(2) de la même loi est remplacé par ce qui suit :

L.R., ch. 6 (3e suppl.), art. 78

Application of regulations

(2) Subject to subsections (3) and (4), regulations made under subsection (1) apply

(*a*) to Canadian ships in all waters; and

(*b*) to all ships in Canadian waters and the exclusive economic zone of Canada.

(2) Sous réserve des paragraphes (3) et (4), les règlements pris en vertu du paragraphe (1) s'appliquent :

a) aux navires canadiens où qu'ils soient;

b) à tous les navires qui se trouvent dans les eaux canadiennes ou dans la zone économique exclusive du Canada.

Application des règlements

R.S., c. 6 (3rd Supp.), s. 78

(2) Subparagraph 562.1(3)(*a*)(ii) of the Act is replaced by the following:

(2) Le sous-alinéa 562.1(3)*a*)(ii) de la même loi est remplacé par ce qui suit :

L.R., ch. 6 (3e suppl.), art. 78

(ii) in the case of other ships, to which waters, within the waters described in paragraph (2)(*b*), the regulation applies;

(ii) les eaux, parmi celles qu'énumère l'alinéa (2)*b*), d'application du règlement, pour les autres navires;

R.S., c. 6 (3rd Supp.), s. 78

98. (1) Subsection 562.11(2) of the Act is replaced by the following:

98. (1) Le paragraphe 562.11(2) de la même loi est remplacé par ce qui suit :

L.R., ch. 6 (3e suppl.), art. 78

Application of regulations

(2) Subject to subsections (3) and (4), regulations made under subsection (1) apply

(*a*) to Canadian vessels in all waters; and

(*b*) to all vessels in Canadian waters and the exclusive economic zone of Canada.

(2) Sous réserve des paragraphes (3) et (4), les règlements pris en vertu du paragraphe (1) s'appliquent :

a) aux bâtiments canadiens où qu'ils soient;

b) à tous les bâtiments qui se trouvent dans les eaux canadiennes ou dans la zone économique exclusive du Canada.

Application des règlements

R.S., c. 6 (3rd Supp.), s. 78

(2) Subparagraph 562.11(3)(*a*)(ii) of the Act is replaced by the following:

(ii) in the case of other vessels, to which waters, within the waters described in paragraph (2)(*b*), the regulation applies; and

(2) Le sous-alinéa 562.11(3)*a*)(ii) de la même loi est remplacé par ce qui suit :

(ii) les eaux, parmi celles qu'énumère l'alinéa (2)*b*), d'application du règlement, pour les autres bâtiments;

L.R., ch. 6 (3e suppl.), art. 78

R.S., c. 6 (3rd Supp.), s. 78

99. Subsection 562.13(2) of the Act is amended by adding the word "and" at the end of paragraph (*a*) and by replacing paragraphs (*b*) and (*c*) with the following:

(*b*) the exclusive economic zone of Canada

99. Les alinéas 562.13(2)*b*) et *c*) de la même loi sont remplacés par ce qui suit :

b) les eaux de la zone économique exclusive du Canada.

L.R., ch. 6 (3e suppl.), art. 78

R.S., c. 6 (3rd Supp.), s. 84

100. Subparagraph 655(1)(*a*)(ii) of the Act is replaced by the following:

(ii) waters in the exclusive economic zone of Canada

100. L'alinéa 655(1)*a*) de la même loi est remplacé par ce qui suit :

a) aux eaux canadiennes, ainsi qu'aux eaux de la zone économique exclusive du Canada, qui ne font pas partie d'une zone de contrôle de la sécurité de la navigation désignée en vertu de la *Loi sur la prévention de la pollution des eaux arctiques*;

L.R., ch. 6 (3e suppl.), art. 84

1993, c. 36, s. 6

101. (1) The definition "waters" in subsection 660.2(1) of the Act is replaced by the following:

"waters" means

(*a*) Canadian waters, and

(*b*) waters in the exclusive economic zone of Canada

and includes, notwithstanding subsection 655(1), waters that are within a shipping safety control zone prescribed pursuant to the *Arctic Waters Pollution Prevention Act*.

101. (1) La définition de « eaux », au paragraphe 660.2(1) de la même loi, est remplacée par ce qui suit :

« eaux » Les eaux canadiennes et les eaux de la zone économique exclusive du Canada. Par dérogation au paragraphe 655(1), sont visées par la présente définition les eaux faisant partie d'une zone de contrôle de la sécurité de la navigation désignée en vertu de la *Loi sur la prévention de la pollution des eaux arctiques*.

1993, ch. 36, art. 6

"waters" "eaux »

« eaux » "waters"

1993, c. 36, s. 6

(2) Subparagraph (*c*)(i) of the definition "ship" in subsection 660.2(1) of the Act is replaced by the following:

(i) a ship that is not a Canadian ship if it is only transiting in the territorial sea of Canada or the exclusive economic zone of Canada and if it is not engaged in the loading or unloading of oil during transit,

(2) Le sous-alinéa *c*)(i) de la définition de « navire », au paragraphe 660.2(1) de la même loi, est remplacé par ce qui suit :

(i) un navire qui n'est pas canadien s'il ne fait que transiter par les eaux de la mer territoriale ou de la zone économique exclusive du Canada et qui n'effectue pas pendant ce temps d'opérations de chargement ou de déchargement d'hydrocarbures,

1993, ch. 36, art. 6

1993, c. 36, s. 6

(3) Subsection 660.2(5) of the Act is replaced by the following:

(3) Le paragraphe 660.2(5) de la même loi est remplacé par ce qui suit :

1993, ch. 36, art. 6

Provision not to apply — oil handling facilities

(5) Subsection (4) does not apply to an oil handling facility that is located in the territorial sea of Canada or the exclusive economic zone of Canada.

(5) Le paragraphe (4) ne s'applique pas aux installations de manutention des hydrocarbures qui se trouvent dans les eaux de la mer territoriale ou de la zone économique exclusive du Canada.

Disposition inapplicable à certaines installations de manutention des hydrocarbures

1993, c. 36, s. 6

102. Subsection 660.10(7) of the Act is replaced by the following:

102. Le paragraphe 660.10(7) de la même loi est remplacé par ce qui suit :

1993, ch. 36, art. 6

Recommendations and response

(7) Each advisory council shall advise and may make recommendations to the Commissioner, and may report to the Minister or to any standing committee of either House of Parliament on Fisheries and Oceans or on Environment, and shall receive a response to such report within 30 days or, if that House is not sitting, within 14 days after it resumes sitting.

(7) Les conseils consultatifs conseillent le commissaire et peuvent lui faire des recommandations. Ils peuvent soumettre leurs avis au ministre ou au comité permanent du Sénat ou de la Chambre des communes chargé des pêches et des océans ou de l'environnement. Ils ont droit de recevoir une réponse à ces avis dans les trente jours ou, si le Parlement ne siège pas alors, dans les quatorze premiers jours où siège la chambre dont relève le comité.

Recommandations et réponse

R.S., c. 6 (3rd Supp.), s. 84

103. Paragraph 675(1)(*c*) of the Act is replaced by the following:

103. L'alinéa 675(1)*c*) de la même loi est remplacé par ce qui suit :

L.R., ch. 6 (3e suppl.), art. 84

(*c*) in the exclusive economic zone of Canada,

c) la zone économique exclusive du Canada.

1993, c. 36, s. 15(2)

104. (1) Subparagraph 677(1)(*b*)(i) of the Act is replaced by the following:

(i) the Minister of Fisheries and Oceans,

104. (1) L'alinéa 677(1)*b*) de la même loi est remplacé par ce qui suit :

b) des frais supportés par le ministre des Pêches et des Océans, un organisme d'intervention agréé aux termes du paragraphe 660.4(1), toute autre personne au Canada ou toute autre personne d'un État partie à la Convention sur la responsabilité civile pour la prise de mesures visant à prévenir, contrer, réparer ou réduire au minimum les dommages dus à la pollution par les hydrocarbures causée par le navire ou les rejets d'hydrocarbures en prévision d'un risque de même que les pertes ou dommages causés par ces mesures, pour autant que ces frais et ces mesures soient raisonnables;

1993, ch. 36, par. 15(2)

1993, c. 36, s. 15(2)

(2) Paragraph 677(1)(*c*) of the Act is replaced by the following:

(*c*) for costs and expenses incurred

(i) by the Minister of Fisheries and Oceans in respect of measures taken

(2) L'alinéa 677(1)*c*) de la même loi est remplacé par ce qui suit :

c) des frais supportés par le ministre des Pêches et des Océans pour les mesures qu'il prend aux termes de l'alinéa 678(1)*a*) en ce qui concerne les mesures de surveillance ou

1993, ch. 36, par. 15(2)

pursuant to paragraph 678(1)(*a*) in respect of any monitoring, or in relation to the direction of the taking of measures or their prohibition, pursuant to paragraph 678(1)(*b*) or (*c*), or

(ii) by any other person in respect of measures the person was directed to take, or prohibited from taking, pursuant to paragraph 678(1)(*b*) or (*c*),

to the extent that the measures taken and the costs and expenses are reasonable, and for any loss or damage caused by such measures.

les mesures qu'il prend, ordonne ou interdit de prendre aux termes des alinéas 678(1)*b*) ou *c*), ou par toute autre personne pour les mesures qu'il lui a été ordonné ou interdit de prendre aux termes des alinéas 678(1)*b*) ou *c*) de même que les pertes ou dommages causés par ces mesures, pour autant que ces frais et ces mesures soient raisonnables.

.S., c. 6 (3rd upp.), s. 84

105. Paragraph 709(*e*) of the Act is replaced by the following:

(*e*) the actual or anticipated oil pollution damage has been caused by a Convention ship but the owner of the Convention ship is not liable because the actual or anticipated damage occurred in the exclusive economic zone of Canada;

105. L'alinéa 709*e*) de la même loi est remplacé par ce qui suit :

e) les dommages réels ou le risque de dommages dus à la pollution par les hydrocarbures ont été causés par un navire soumis à l'application de la Convention, mais son propriétaire n'est pas responsable parce que ces dommages, ou le risque de dommages, se sont produits dans la zone économique exclusive du Canada;

L.R., ch. 6 (3e suppl.), art. 84

.S., c. 6 (3rd upp.), s. 84

106. The portion of subsection 713(1) of the Act before paragraph (*a*) is replaced by the following:

713. (1) Where a claimant commences proceedings against the owner of a ship or their guarantor in respect of a matter referred to in subsection 677(1), except in the case of proceedings commenced by the Minister of Fisheries and Oceans under paragraph 677(1)(*c*) in respect of a pollutant other than oil,

106. Le passage du paragraphe 713(1) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

713. (1) À l'exception des procédures qu'intente le ministre des Pêches et des Océans en vertu de l'alinéa 677(1)*c*) à l'égard d'un polluant autre que les hydrocarbures, les règles qui suivent s'appliquent aux actions en responsabilité fondées sur le paragraphe 677(1) intentées contre le propriétaire d'un navire ou son garant :

L.R., ch. 6 (3e suppl.), art. 84

here party ffering mage sues vner of ship der s. 677

Action contre le propriétaire du navire en vertu de l'article 677

S., c. W-9; 994, c. 23, s. F)

Canada Wildlife Act

Loi sur les espèces sauvages du Canada

L.R., ch. W-9, 1994, ch. 23, art. 2(F)

994, c. 23, 8

107. Subsection 4.1(1) of the *Canada Wildlife Act* is replaced by the following:

107. Le paragraphe 4.1(1) de la *Loi sur les espèces sauvages du Canada* est remplacé par ce qui suit :

1994, ch. 23, art. 8

otected rine areas

4.1 (1) The Governor in Council may establish protected marine areas in any area of the sea that forms part of the internal waters of Canada, the territorial sea of Canada or the exclusive economic zone of Canada.

4.1 (1) Le gouverneur en conseil peut constituer en zone marine protégée tout espace maritime faisant partie des eaux intérieures, de la mer territoriale ou de la zone économique exclusive du Canada.

Zones marines protégées

Terminology

108. The following provisions are amended by replacing the expression "continental shelf" with the expression "continental shelf of Canada":

(*a*) the definitions "coasting trade" and "licence" in subsection 2(1) and subsections 2(2) and 16(5) of the *Coasting Trade Act*; and

(*b*) paragraph (*a*) of the definition "designated goods" in subsection 2(1) and sections 3 to 6 and 8 of the *Customs and Excise Offshore Application Act*.

COMING INTO FORCE

Coming into force

109. This Act or any of its provisions, other than section 53, comes into force on a day or days to be fixed by order of the Governor in Council.

Précision terminologique

108. Dans les passages suivants des lois ci-après, « plateau continental » est remplacé par « plateau continental du Canada »:

***a*) les définitions de « cabotage » et « licence », au paragraphe 2(1), ainsi que les paragraphes 2(2) et 16(5) de la *Loi sur le cabotage*;**

***b*) l'alinéa *a*) de la définition de « biens désignés », au paragraphe 2(1), ainsi que les articles 3 à 6 et 8 de la *Loi sur la compétence extracôtière du Canada pour les douanes et l'accise*.**

ENTRÉE EN VIGUEUR

Entrée en vigueur

109. Exception faite de l'article 53, la présente loi ou telle de ses dispositions entre en vigueur à la date ou aux dates fixées par décret.

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Canadian Coast Guard | Garde côtière canadienne

SUMMARY OF SHIP SAFETY POLLUTION PREVENTION ACTIVITIES 1993

Canada

DECEMBER 1994

15.0 Pollution Incidents

15.1 Pollution Incident Database

Pollution Incident Reports are submitted to the division by Ship Safety pollution prevention officers throughout Canada whenever a pollution incident is investigated. A computer database going back to 1978 was established and is now updated once every two weeks. Originally, the database was used only to keep track of the number of investigations and prosecutions, but the addition of several fields has increased its usefulness in analyzing various factors relating to pollution from ships. Any reports received from VTS, Emergencies, DND and the Coast Guard pollution flights are now being added to the database.

15.2 Update to 1992 Report

The following prosecutions were completed in 1992 but did not appear in last years report.

(a) CARTIERDOC - December 24, 1991
The vessel spilled 10 to 20 gallons of oily mixture in Montreal. The ship was fined $7000 on December 3, 1992.

(b) KRISTINA LOGOS - February 17, 1992
A diesel overflow occurred while fuelling at Lunenburg, N.S.. The ship was fined $1000 on May 17, 1992.

(c) SAGUENAY - March 23, 1992
A spill of about 65 litres of oily mixture occurred at Montreal when the Chief Engineer forgot to close a valve when pumping bilges to the slop tank. The ship was fined $5000 on December 7, 1992.

(d) ICEPEARL - September 13, 1992
After divers discovered oil coming from the sea chest when the vessel was at Surrey, B.C., an investigation found that dirty ballast had been discharged resulting a spill of about 1 barrel of oily mixture. The ship entered a plea of guilty and was fined $1000 on October 21, 1992.

15.3 Pollution Incidents and Prosecutions in 1993

(a) Table VI shows a breakdown of the number of reports received by Coast Guard region. Tables VII, VIII, IX and X are similar but break down the number of incidents by the ship type, spill size, cause of the spill and the type of pollutant respectively.

(b) Table XI shows a summary of pollution reports and prosecutions for 1993.

(c) Table XII lists the maximum and minimum fines for the pollution cases concluded during 1993 where the accused was found guilty; the information is broken down by the cause of the pollution. The average fine of $5,937 was slightly higher than the average fine imposed over the 14-year period from 1979 through 1992, which was $4,849.

(d) In cases where ships which are in transit or leaving a Canadian port are spotted polluting, usually by aerial surveillance, through international agreements (MARPOL and previously OILPOL) evidence can be gathered and forwarded to the flag state of the ship for their action. During 1993, 13 cases were referred to the flag state and responses were received from 3 flag states indicating that a total of $11,000 in fines had been imposed, as indicated in Table XI.

(e) Table XIII lists the 34 incidents that occurred prior to 1993 where charges were laid and the final determination occurred in 1993.

(f) Details of the 699 incidents reported during 1993 are listed in Tables XIV, XV, XVI, XVII, XVIII and XIX for the six Coast Guard regions.

15.4 Incidents of Particular Interest in 1993

The following incidents and prosecutions of interest occurred during 1993.

(a) BEHRAM KAPTAN - December 6, 1991
It was estimated that the vessel had pumped 1200 gallons of bilge oil in English Bay, Vancouver, B.C. Samples of the oil matched and the ship was fined $20,000 on April 7, 1993. The ship also paid the clean up costs which were about $45,000.

(b) SKRIM - March 13, 1992
The vessel suffered ice damage in the Cabot Strait while inbound for Sept-Iles and spilled 123 tonnes of heavy bunker oil. The vessel proceeded to Halifax for repairs. As it was considered that the spill was caused by excessive speed in ice-covered waters, that reporting was untimely, and that tanks were not sounded on realising the damage, the ship was charged with polluting and fined $35,000 on January 18, 1993. Clean-up costs were $125,000.

(c) TUPI ANGRA - March 18, 1992
It was estimated that the ship had pumped 1000 litres of bilge oil at Section 52 in the Port of Quebec using a general service pump. The ship was fined $20,000 on May 4, 1993.

(d) BORA BORA I - April 6, 1992
The ship pumped 20 to 35 gallons of motor oil and bilge oil at Section 27 of the Port of Quebec using a faulty 15 ppm oily water separator. The ship was fined $15,000 on February 4, 1993.

(e) FREENES - June 14, 1992
The ship was spotted by a fisheries patrol aircraft trailing 1 to 1½ barrels of oil in Fishing Zone 4. The vessel plead guilty to charges of polluting and was fined $15,000 on March 23, 1993.

(f) NORDIC APOLLO - October 20, 1992
During production operations on the ROWAN GORILLA III off the coast of Nova Scotia, 10 barrels of lubrication oil were lost, some of which was spilled on the deck of the NORDIC APOLLO. The ship also lost 6 to 9 barrels of Scotian light crude through a vent. The losses were reported to be due to sea conditions; synchronous rolling occurred while the vessel remained moored to the loading buoy. The vessel plead guilty to polluting and was fined $15,000 on September 30, 1993.

(g) WORLD CASTLE - February 11, 1993
The vessel was sighted by a Coast Guard patrol aircraft trailing a 14-mile broken slick in Fishing Zone 4 off the coast of Nova Scotia. The ship indicated that decks were being washed due to a small hydraulic line break. The ship was inspected in Come-by-Chance but no irregularities were found. The ship plead guilty to a charge of polluting and was fined $20,000 on November 15, 1993. There were no previous charges and the ship was apparently well operated and maintained.

(h) ATLANTIC FREIGHTER - April 29, 1993
Oil was seen being discharged from the drydock drain pump at the Newfoundland Dockyard, St. John's, Nfld. An inspection of the ATLANTIC FREIGHTER revealed oily residue from the starboard aft bilge overboard connection. The valve disk, bonnet and spindle had been removed as part of the drydock specification. It was found that the discharge valve to the waste oil tank was open when it normally should have been closed. An estimated 11000 gallons was spilled.

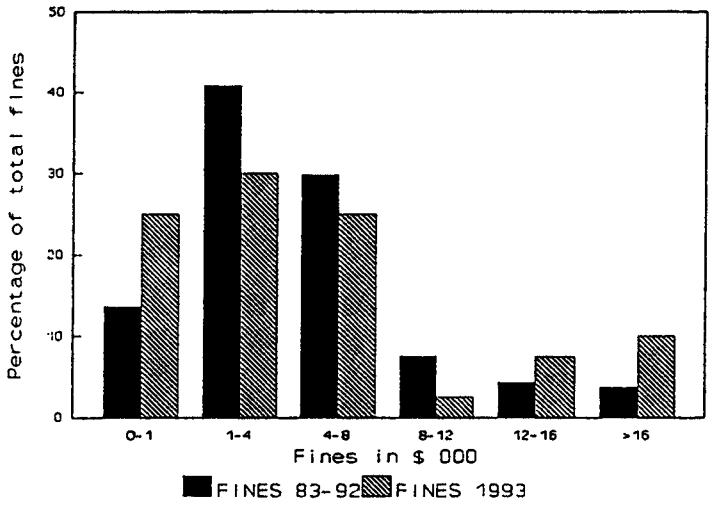
(i) GENERAL TIRONA - December 13, 1993
The vessel was moving from one berth to another at the Lynterm Terminal, Vancouver, B.C., with a pilot aboard and with the assistance of 3 tugs. The vessel swung around and came astern hitting a metal padeye which holds a fender. The padeye punctured the ship's side fuel tank spilling 43 tonnes of diesel fuel. The Department of Justice was consulted but, because the spill occurred as a result of an accident that did not occur as a result of an action that is outside the ordinary practice of seamen, it came within the exception to the general prohibition of oil discharge in the Oil Pollution Prevention Regulations and therefore there was no basis to lay a charge for polluting. The vessel was responsible for the costs of clean-up and environmental damage.

15.5 Analysis of Pollution Data

15.5.1 Range of Fines

During 1993, 39 fines ranging from $500 to $35,000 related to ship source pollution were imposed. Figure 1 shows the range of fines for 1993 and for the 10 year period from 1983 to 1992. The range of fines imposed in 1993 was not radically different than those over the last 10 years, but there was a greater percentage of low fines and high fines.

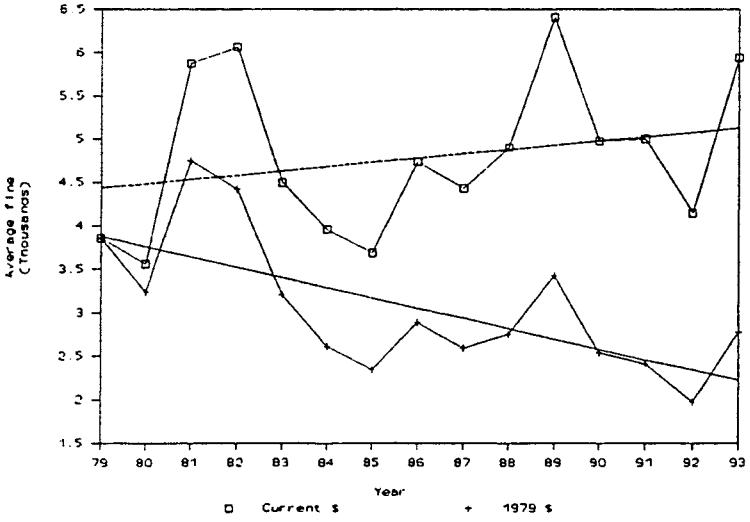
FIGURE 1 - FINES FOR SHIP SOURCE POLLUTION



15.5.2 Trend in the Amount of Average Fines

Figure 2 shows average fines over the last 15 years in current dollars (i.e. the actual amount of the fine imposed at the time) and in 1979 dollars (i.e. the actual amount of the fine reduced to account for inflation since 1979). Although the level of actual fines has shown a slight increase over the years, when inflation is taken into account the level of fines has actually decreased. The increase in maximum fine from $100 000 to $250 000 that came into effect April 24, 1989, does not appear to have influenced the level of fines imposed.

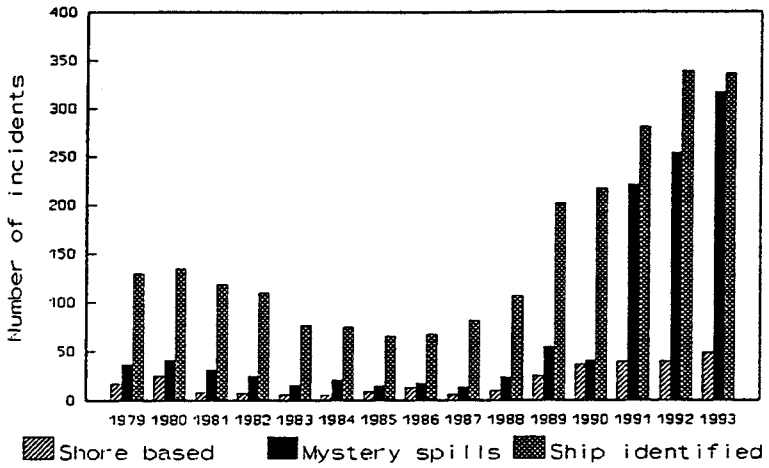
FIGURE 2 - AVERAGE FINES FOR SHIP POLLUTION



15.5.3 Number of Incidents Reported

Figure 3 shows the number of pollution incidents reported over the last 15 years. The number of reported incidents dropped during the mid-eighties but rose sharply over the last several years. The dramatic increase in the number of mystery spills can be explained by the change in reporting mentioned previously.

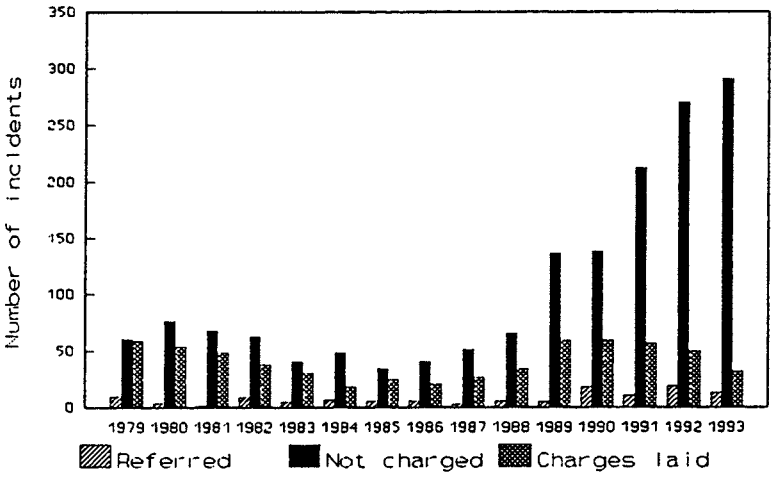
FIGURE 3 - NUMBER OF POLLUTION INCIDENTS REPORTED



15.5.4 Action Taken in Cases of Ship Source Pollution

In Figure 4, the number of incidents where the ship was identified from Figure 3 has been further broken down to show the action taken in respect to prosecution. Incidents 'Referred' are those where information is forwarded to the flag state in accordance with international agreements, as outlined in paragraph 15.3(d). Information on the outcome of prosecutions in Canada since 1979 is summarized in Table XX.

FIGURE 4 - SHIP SOURCE POLLUTION INCIDENTS



15.6 Annual Report to the IMO

In accordance with MEPC Circular 266, mandatory annual reports under MARPOL 73/78 are forwarded to the IMO. This report consists of four parts, as follows:

- Format 1: Incidental Spillages of Liquids 50 Tonnes or More
- Format 2: Violations of the Discharge Provisions
- Format 3: Alleged Inadequacy of Reception Facilities
- Format 4: MARPOL Application: Statistical Reports

The Canadian report for 1993 consisted of 107 reports of MARPOL discharge violations under Format 2 and the statistical report under Format 4; there were no incidents to report under Formats 1 and 3. The Format 4 report is shown in Table XXI.

16.0 Canada Shipping Act (CSA)

16.1 Part XV and Part XVI of the CSA provide the legislative authority for establishing the anti-pollution programme for shipping in Canadian waters and fishing zones, other than those areas north of 60°N that are within a Shipping Safety Control Zone established under the Arctic Waters Pollution Prevention Act. Bill C-121, which received Royal Assent on June 23, 1993, amended Part XV and Part XVI as Chapter 36 of the Statutes of Canada 1993. Most requirements of Chapter 36 were proclaimed into force on Dec. 31, 1993.

16.2 Bill C-121, included the following:

- for polluters guilty of an indictable offence, increasing the maximum fine to $ 1 million from $ 250,000 or to imprisonment for a term not longer than 3 years, or both;
- implementing the International Convention on Salvage 1989;
- implementing the OPRC Convention, 1990; and
- extending the powers of PPOs with respect to emergency response plans for ships and shore facilities.

16.3 There are further proposed minor amendments to the CSA which are expected to be processed through Parliament in 1995. These proposed amendments include:

- extending powers of the Board in Part V to also apply to Part XV;
- extending powers to regulate ships to include loading and unloading facilities;
- extending powers to regulate barges;
- setting qualification standards for PPOs;
- allowing ballast water control regulations; and
- allowing PPOs to take "any relevant document or copy thereof" as well as samples of a pollutant from a ship.

17.0 Pollution Prevention Regulations under the Canada Shipping Act

17.1 The Canadian Pollution Prevention Regulations Reference Manual TP 11560

Subsequent to Canada's accession to MARPOL 73/78, the Canadian Pollution Prevention Regulations Reference Manual was produced. The amended Canadian pollution prevention regulations refer to several IMO documents. This manual contains both Canadian and IMO documents pertaining to these regulations, in particular those dealing with reporting, oil pollution prevention and noxious liquid substances. The manual replaces the publication IMO Resolutions and Documents Pertaining to MARPOL 1973/1978 TP 5610.

17.2 Status of Pollution Prevention Regulations under the CSA

17.2.1 *Air Pollution Regulations*: There were no changes to these regulations in 1993. The prevention of air pollution from ships, including fuel oil quality, was discussed at MEPC 34. Research continued during 1993 with the intention of updating this regulation.

17.2.2 Proposed *Ballast Water Control Regulations*: It is intended to replace the current voluntary guidelines for ballast water control with mandatory regulations. Amendments to the Canada Shipping Act will provide the statutory authority to introduce the regulations, likely in 1995. The IMO adopted guidelines for ballast water exchange in July 1991. U.S. legislation for ballast water exchange took effect on May 10, 1993. The effectiveness of mid-ocean exchange was examined in 1990. A study by Pollutech Environmental to look into alternatives to mid-ocean exchange was completed in March 1992. The study was inconclusive in identifying practical alternatives. A multi-year research project examining the role of ships in transporting non-native species to North American marine brackish and fresh waters is being conducted in the U.S. There is a possibility that, as a result of such studies, it may be recommended to extend the current Great Lakes ballast water controls to include all Canadian waters.

17.2.3 *Garbage Pollution Prevention Regulations*: There were no changes to these regulations in 1993. These regulations prohibit the discharge of garbage from ships in Canadian waters and fishing zones. Annex V of MARPOL which deals with garbage has been in effect internationally since December 31, 1988. Canada did not accede to Annex V when MARPOL was acceded to. Cargo sweepings are considered as garbage under Annex V but, if the substance is not a pollutant, have not been restricted under Canadian legislation. A study was conducted during 1993 by Melville Shipping Ltd. for AMSE to investigate the effects of cargo sweepings on the Great Lakes. The study concluded that the quantity lost and the damage done is minimal, but some controls are required. A CMAC working group has been established in the Central Region to address cargo sweepings and the USCG are conducting further studies. Amendments to the Garbage Pollution Prevention Regulations that would implement Annex V are scheduled for 1997.

17.2.4 *Great Lakes Sewage Pollution Prevention Regulations*: These regulations prohibit the discharge of untreated sewage from ships into the Great Lakes. Ships must be fitted with holding tanks and discharge ashore or approved marine sanitation devices which require a monitor to assure their effective operation. An amendment to these regulations to permit periodic test sampling of effluent from IMO approved devices as an alternative to a monitor was proposed. Implementation of the proposed amendment was delayed until an environmental impact review was completed in March 1993. The review indicated that the amendment should proceed; processing of the amendment should be completed in 1995. An amendment to the regulations to change the responsibility for approving marine sanitation devices from Environment Canada to the Canadian Coast Guard, was processed in 1992 and entered into force in April 1993.

17.2.5 *Non-Canadian Ships Compliance Certificate Regulations*: These regulations were rescinded on February 16, 1993.

17.2.6 *Non-Pleasure Craft Sewage Pollution Prevention Regulations*: There was a minor amendment to the French version these regulations that became effective on May 11, 1993. The regulations prohibit the discharge of sewage from new commercial vessels from December 31, 1991 and from existing commercial vessels from December 31, 1992 into any waters designated by provincial authorities under the *Pleasure Craft Sewage Pollution Prevention Regulations*. Three lakes in British Columbia have been designated. An amendment to consolidate the Non-Pleasure Craft Sewage Pollution Prevention Regulations with the Pleasure Craft Sewage Pollution Prevention Regulations, as suggested by the Regulatory Review Committee, was initiated and should also be completed in 1995.

17.2.7 *Dangerous Chemicals and Noxious Liquid Substances Regulations*: These regulations came into effect on February 16, 1993. The regulations implement Annex II to MARPOL 73/78 and the IBC and BCH Codes.

17.2.8 *Oil Pollution Prevention Regulations*: A major revision to these regulations to implement Annex I of MARPOL 73/78 came into effect on February 16, 1993. The revision requires the fitting of oily-water separating equipment on certain ships and changes the provisions for the discharge of oil into the water.

17.2.9 *Pleasure Craft Sewage Pollution Prevention Regulations*: There was a minor amendment to these regulations to correct inconsistencies between the English and French versions that was effective on May 11, 1993. The regulations prohibit the discharge of sewage from pleasure craft similar to the *Non-Pleasure Craft Sewage Pollution Prevention Regulations*. These regulations also require that craft fitted with a toilet also be fitted with a holding tank. An amendment to designate certain waters in Manitoba was initiated and should be completed in late 1994.As noted in 17.2.6, an amendment to consolidate these regulations with the *Non-Pleasure Craft Sewage Pollution Prevention Regulations* is being processed.

17.2.10 *Pollutant Discharge Reporting Regulations*: These regulations entered into force on April 13, 1992. These regulations amalgamate the requirement to report different types of pollution incidents. Reports have to be made to a pollution prevention officer in accordance with TP9834 Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants published by the Coast Guard or IMO Resolution A-648(16) General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants. These regulations were amended on March 9, 1993 to include reporting of the discharge, or anticipated discharge, of a noxious liquid substance.

17.2.11 *Pollutant Substances Regulations*: No amendments were made to these regulations during 1993. The regulations were however, partially superseded when the *Dangerous Chemicals and Noxious Liquid Substances Regulations* entered into force on February 16, 1993. The *Pollutant Substances Regulations* presently prohibit the discharge of over 400 listed chemicals in Canadian waters and fishing zones. The *Dangerous Chemicals and Noxious Liquid Substances Regulations* permit a controlled minimal discharge of tank washings for about 50 of these substances in certain waters.

18.0 Port State Control

18.1 Canada became a full member under the Paris Memorandum of Understanding on Port State Control in May, 1994. Port state control inspections of foreign flagged ships by Coast Guard surveyors in the regions includes verification that the requirements of MARPOL have been complied with. Port State inspection and compliance statistics for 1993 have been compiled by Ship Inspection Informatics, AMSFD.

19.0 Arctic Waters Pollution Prevention Act (AWPPA)

19.1 The legislative authority for establishing the pollution prevention programme for shipping in waters north of 60°N is provided in the AWPPA. The AWPPA does not deal solely with shipping but is a coordinated piece of legislation dealing also with offshore and land pollution arising in the Canadian Arctic.

19.2 CCG Northern Region administers the legislation and is responsible for the shipping pollution prevention programme. If any further information is required contact Ship Safety - Northern Region, AMNS, 344 Slater St., Ottawa, Ont. K1A 0N7 tel. 613-991-6004 fax 613-995-4700.

19.3 Status of Regulations, Standards or Guidelines Applicable in the Arctic

19.3.1 *Arctic Shipping Pollution Prevention Regulations* - No changes were made to these regulations in 1993.

19.3.2 *Arctic Waters Pollution Prevention Regulations* - No changes were made to these regulations in 1993.

19.3.3 *Equivalent Standards for the Construction of Arctic Class Ships* - These standards continued to be developed during 1993. Several research projects were completed. Completion of these standards and application is targeted for the end of 1994.

19.3.4 *Arctic Waters Oil Transfer Guidelines* - These guidelines were introduced in 1991. They require the reporting of oil transfers carried out in the Arctic. Reports from ships are sent through the NORDREG system. Exceptionally responsive reporting was found to occur.

19.3.5 *Guidelines for the operation of Tankers and Barges in Canadian Arctic Waters* - These guidelines apply a self-policed code of construction and carriage requirement for oil on board ships. Except for one vessel, all ships operating in 1993 complied with the guidelines. All charterers of ships are reminded that these guidelines should be made a part of all charter agreements.

19.3.6 *Instructions for the Ice Regime System* - These instructions continued to be developed for application as a part of the *Ice Regime Control System* that is planned to be introduced in 1995.

TABLE VI

POLLUTION INCIDENTS REPORTED TO THE SHIP SAFETY BRANCH OF THE CANADIAN COAST GUARD
1993

LOCATION	SIZE OF SPILL IN LITRES						TYPE OF POLLUTANT					CAUSE				CHARGES		FINES	SOURCE OF SPILL			TOTAL
	NOT KNOWN	<10	10-100	100-1000	1000-100000	> 100000	OIL	CHEM	GARBAGE	SEWAGE	OTHER	OPERATIONAL	ACCIDENT	LAND	NOT KNOWN	YES	NO	$	SHIP	MYSTERY SPILL	SHORE BASED	
NEWFOUNDLAND	28	45	11	4	1	0	82	0	0	1	6	18	6	3	62	3	86	6500	35	51	3	89
MARITIMES	94	113	47	28	4	0	278	1	0	0	7	78	16	17	175	11	275	69300	125	144	17	286
QUÉBEC	42	56	16	20	2	0	129	0	1	0	6	35	5	8	88	6	130	33750	57	71	8	136
CENTRAL	39	36	13	7	1	0	89	0	0	0	7	26	8	16	46	4	92	18200	37	43	16	96
WESTERN	43	14	14	12	5	0	72	0	3	0	13	36	22	5	25	13	75	6200	70	13	5	88
ARCTIC	1	0	1	1	1	0	4	0	0	0	0	3	1	0	0	0	4	0	4	0	0	4
TOTAL	247	264	102	72	14	0	654	1	4	1	39	196	58	49	396	37	662	133950	328	322	49	699

TABLE VII

POLLUTION INCIDENTS REPORTED TO THE SHIP SAFETY BRANCH OF THE CANADIAN COAST GUARD
1993

SHIP TYPE	SIZE OF SPILL IN LITRES						TYPE OF POLLUTANT					CAUSE				CHARGES		FINES	SOURCE OF SPILL			TOTAL
	NOT KNOWN	<10	10-100	100-1000	1000-100000	> 100000	OIL	CHEM	GARBAGE	SEWAGE	OTHER	OPERA-TIONAL	ACCIDENT	LAND	NOT KNOWN	YES	NO	$	SHIP	MYSTERY SPILL	SHORE BASED	
OIL TANKER	15	6	8	3	2	0	31	0	0	0	3	18	2	0	14	2	32	24500	34	0	0	34
OBO	5	2	1	3	0	0	9	0	1	0	1	5	0	0	6	2	9	18000	11	0	0	11
CHEMICAL CARRIER	4	0	1	0	1	0	3	0	0	0	3	5	0	0	1	2	4	12500	6	0	0	6
BARGE	8	7	11	6	0	0	30	0	0	0	2	23	4	0	5	0	32	0	32	0	0	32
TUG	8	5	5	4	0	0	22	0	0	0	0	14	8	0	0	3	19	1300	22	0	0	22
CARGO VESSEL	22	9	9	15	4	0	51	0	1	0	7	38	3	0	18	10	49	46450	59	0	0	59
FISHING VESSEL	34	12	12	14	1	0	68	0	1	0	4	34	24	0	15	12	61	25500	70	3	0	73
FERRY	1	3	1	1	0	0	6	0	0	0	0	4	0	0	2	0	6	0	6	0	0	6
PASSENGER VESSEL	5	3	4	0	0	0	9	0	1	0	2	5	0	0	7	5	7	5000	12	0	0	12
DREDGE	1	1	0	0	1	0	3	0	0	0	0	0	3	0	0	0	3	0	3	0	0	3
OFFSHORE SUPPLY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ICE BREAKER	0	0	1	0	0	0	1	0	0	0	0	1	0	0	0	0	1	0	1	0	0	1
SURVEY VESSEL	0	0	1	0	0	0	1	0	0	0	0	1	0	0	0	0	1	0	1	0	0	1
OTHER	18	19	19	7	1	0	63	0	0	0	1	32	12	0	20	1	63	700	63	1	0	64
UNKNOWN	97	189	22	15	2	0	310	1	0	1	13	16	2	0	307	0	325	0	7	318	0	325
LAND SOURCE	29	8	7	4	1	0	46	0	0	0	3	0	0	49	0	0	49	0	0	0	49	49
TOTAL	247	264	102	72	14	0	654	1	4	1	39	196	58	49	396	37	662	133950	328	322	49	699

TABLE VIII

POLLUTION INCIDENTS REPORTED TO THE SHIP SAFETY BRANCH OF THE CANADIAN COAST GUARD
1993

SIZE OF SPILL IN LITRES	TYPE OF POLLUTANT					CAUSE				CHARGES		FINES	SOURCE OF SPILL			TOTAL
	OIL	CHEM	GARBAGE	SEWAGE	OTHER	OPERA-TIONAL	ACCIDENT	LAND	NOT KNOWN	YES	NO	$	SHIP	MYSTERY SPILL	SHORE BASED	
NOT KNOWN	206	1	4	0	36	57	35	29	126	6	241	22350	125	93	29	247
LESS THAN 10	263	0	0	1	0	35	6	8	215	1	263	4000	66	190	8	264
10 TO 100	102	0	0	0	0	59	6	7	30	17	85	25550	73	22	7	102
100 TO 1000	70	0	0	0	2	38	8	4	22	11	61	62050	53	15	4	72
1000 TO 100 000	13	0	0	0	1	7	3	1	3	2	12	20000	11	2	1	14
GREATER THAN 100 000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	654	1	4	1	39	196	58	49	396	37	662	133950	328	322	49	699

TABLE IX

POLLUTION INCIDENTS REPORTED TO THE SHIP SAFETY BRANCH OF THE CANADIAN COAST GUARD
1993

CAUSE OF SPILL	SIZE OF SPILL IN LITRES						TYPE OF POLLUTANT					CHARGES		FINES	NATIONALITY OF SHIP				SOURCE OF SPILL			TOTAL
	NOT KNOWN	<10	10-100	100-1000	1000-100000	>100000	OIL	CHEM	GARBAGE	SEWAGE	OTHER	YES	NO	$	CDN	FOREIGN	NOT KNOWN	LAND	SHIP	MYSTERY SPILL	SHORE BASED	
PUMPING BILGES	15	3	5	8	2	0	33	0	0	0	0	12	21	62450	12	16	5	0	28	5	0	33
TANK OVERFLOW	4	10	13	10	1	0	36	0	0	0	2	7	31	29900	24	12	2	0	36	2	0	38
VALVE, FLANGE OR PLUG OPEN OR LEAKING	4	2	7	5	1	0	18	0	0	0	1	1	18	4000	12	7	0	0	19	0	0	19
HOSE, PIPE COUPLING OR SEAL LEAKING	9	7	14	5	1	0	34	0	0	0	2	6	30	18050	23	13	0	0	36	0	0	36
TANK OR HULL LEAKING	5	3	3	1	1	0	13	0	0	0	0	2	11	3500	9	4	0	0	13	0	0	13
COLLISION GROUNDING OR SINKING	30	3	3	7	2	0	44	0	0	0	1	1	44	0	37	7	1	0	44	1	0	45
DEBALLASTING	6	1	2	1	0	0	5	0	0	0	5	1	9	1000	5	5	0	0	10	0	0	10
OTHER	48	20	25	13	3	0	100	0	4	0	5	5	104	2050	39	12	9	49	51	9	49	109
UNKNOWN OR NOT SPECIFIED	126	215	30	22	3	0	371	1	0	1	23	2	394	13000	46	45	305	0	91	305	0	396
TOTAL	247	264	102	72	14	0	654	1	4	1	39	37	662	133950	207	121	322	49	328	322	49	699

TABLE X

POLLUTION INCIDENTS REPORTED TO THE SHIP SAFETY BRANCH OF THE CANADIAN COAST GUARD
1993

TYPE OF POLL-UTANT	SIZE OF SPILL IN LITRES						CLEAN-UP		CAUSE				AERIAL SURVEILLANCE		CHARGES		FINES	SOURCE OF SPILL			TOTAL
	NOT KNOWN	<10	10-100	100-1000	1000-100000	> 100000	YES	NO	OPERA-TIONAL	ACCIDENT	LAND	NOT KNOWN	YES	NO	YES	NO	$	SHIP	MYSTERY SPILL	SHORE BASED	
OIL	206	263	102	70	13	0	146	508	180	57	46	371	287	367	32	622	120100	300	308	46	654
CHEM-ICAL	1	0	0	0	0	0	1	0	0	0	0	1	0	1	0	1	0	0	1	0	1
GARBAGE	4	0	0	0	0	0	3	1	4	0	0	0	0	4	3	1	1350	4	0	0	4
SEWAGE	0	1	0	0	0	0	0	1	0	0	0	1	0	1	0	1	0	0	1	0	1
OTHER	36	0	0	2	1	0	5	34	12	1	3	23	6	33	2	37	12500	24	12	3	39
TOTAL	247	264	102	72	14	0	155	544	196	58	49	396	293	406	37	662	133950	328	322	49	699

TABLE XI

Pollution Incidents Reported to the Ship Safety Branch of the Canadian Coast Guard

Number of Spills Reported in 1993

Ship Source		333
	Charges laid in Canada	35
	Information forwarded to the flag state	13
	No charges laid	285
Shore based		49
Mystery spill		317
Total		699

Prosecutions Completed in 1993

Number of convictions in Canada	40
Charges withdrawn or the accused found not guilty	1
Total fines	$231,550
Average fine	$5,937
Maximum fine	$35,000
Number of convictions by flag states	3
Total fines by flag states	$11,000

TABLE XII

FINES FOR SHIP SOURCE POLLUTION 1993

CAUSE OF POLLUTION	NUMBER OF PROSECUTIONS	TOTAL FINES	MAXIMUM FINE	MINIMUM FINE	AVERAGE FINE
Pumping bilges (Oil)	8	$85,300	$20,000	$500	$10,663
Tank overflow (Oil)	11	$39,100	$10,000	$600	$3,555
Valve or flange leaking (Chemical)	1	$3,000	$3,000	$3,000	$3,000
Hose or pipe leaking (Oil)	4	$2,550	$1,000	$0	$638
Tank leaking (Oil)	2	$3,500	$2,500	$1,000	$1,750
Deballasting (Oil)	1	$500	$500	$500	$500
Hose draining (Oil)	1	$2,000	$2,000	$2,000	$2,000
Other	4	$55,700	$35,000	$700	$13,925
Unknown or not specified	7	$39,150	$15,000	$1,200	$5,593
Garbage thrown overboard	1	$750	$750	$750	$750
TOTAL	40	$231,550	$35,000	$0	$5,789

TABLE XX

SHIP SOURCE POLLUTION PROSECUTIONS 1979 to 1993

Year	Number of Ship Source Incidents Reported	Number of Charges Laid	Number of Cases Concluded During the Year Where the Accused was Found Guilty	Average Fine Imposed During the Year	Maximum Fine Imposed During the Year	Total Fines Imposed During the Year
1979	120	59	41	$3859	$25 000	$158 200
1980	131	54	53	$3562	$20 000	$188 803
1981	117	49	50	$5875	$20 000	$293 757
1982	101	38	36	$6065	$30 000	$218 353
1983	72	31	36	$4496	$25 000	$161 850
1984	68	19	23	$3957	$13 000	$ 91 000
1985	60	25	20	$3688	$15 000	$ 73 750
1986	62	21	17	$4736	$12 500	$ 80 506
1987	79	27	22	$4431	$15 000	$ 97 480
1988	100	35	32	$4900	$35 000	$156 812
1989	188	60	42	$6407	$50 000	$269 100
1990	195	60	35	$4975	$25 000	$174 110
1991	255	56	64	$4999	$25 000	$319 950
1992	309	49	52	$4269	$15 000	$222 000
1993	299	21	32	$6895	$35 000	$220 650

Note: The number of ship source incidents reported does not include incidents where the information was forwarded to the vessel's flag state.

資料 3

APPENDIX B.

Department of External Affairs — Ministère des Affaires extérieures

Canada

NOTE NO. ETT-1089

The Department of External Affairs presents its compliments to the Heads of Missions accredited to Canada and has the honour to refer to the matter of requests for permission to enter ports and/or waters under Canadian jurisdiction.

The Department has the honour to inform the Missions that the Canadian Government, as the result of a recent review of clearance procedures, has decided to make certain clarifications in the procedures. The Department has, therefore, the honour to enclose a copy of the "Canadian Clearance Procedure for Foreign Vessels Entering Ports and/or Waters Under Canadian Jurisdiction".

Should the Mission wish to have additional information on Clearance Procedures, the Department of External Affairs would be pleased to discuss them further.

The Department of External Affairs avails itself of this opportunity to renew to the Missions the assurances of its highest consideration.

OTTAWA, MAY 2, 1983

Purpose of Voyage / Vessel Class	Procedure Number	
	Research Programme	Port Call
Scientific Research	1	1
Fisheries Research	1	1
Licensed Fishing	N/A	2
Unlicensed Fishing	N/A	2
"State"	1	1
Merchant Marine Training	N/A	1
Naval Vessel	Referred directly to External Affairs (with the exception of routine and informal visits by naval vessels of NATO member countries which should be referred directly to the Department of National Defence)	
Merchant Marine	No clearance necessary	

Note: No clearance is necessary for "innocent passage" but vessels must observe Canadian maritime regulations

CLEARANCE PROCEDURE FOR DIPLOMATIC MISSIONS REQUESTING PERMISSION FOR VESSELS TO ENTER PORTS AND/OR WATERS UNDER CANADIAN JURISDICION

Procedure Number 1

a. Foreign states or their agencies or nationals wishing to conduct a research programme in waters under Canadian jurisdiction and/or wishing to enter a Canadian port will apply for permission, in each instance, through diplomatic channels to the Department of External Affairs, Transportation and Communications Division (ETT), at least forty-five (45) calendar days in advance of the proposed date of entry into ports and/or waters under Canadian jurisdiction. However, the Department of External Affairs may require further time to assess complex research programmes and clearances.

b. When applying for permission, the request should include complete documentation of the vessel's proposed activities; the name, length, beam, draft, tonnage and call sign of the vessel; the names of the master and chief scientist; and the number of the vessel's scientific complement; and the exact dates of arrival and departure to and from ports and/or waters under Canadian jurisdiction.

c. An exchange of scientific data is required when research is conducted in waters under Canadian jurisdiction.

d. Canada reserves the right to participate or be represented in the proposed research or investigations in waters under Canadian jurisdiction. Canada further reserves the right to negotiate the content of the proposed research or investigation.

e. When the above criterion have been met, the Department of External Affairs will consult with the appropriate Canadian authorities and in due course notify the requesting state that permission has been granted or refused.

f. After the Canadian authorities have authorised a vessel's activities in waters under Canadian jurisdiction, there may arise an unanticipated requirement for an alteration to the vessel's planned port or date of arrival because of inclement weather, mechanical difficulties, operational problems related to the research

programme or additional port calls. In these cases, the Department of External Affairs, Transportation and Communications Division (ETT) must be notified through diplomatic channels forty-eight (48) hours (excluding Saturdays, Sundays and holidays) prior to any change in plans. The Department of External Affairs will attempt to accommodate the request but cannot quarantee approval at such short notice.

g. A fishing license is required in all cases of fishing, sampling and other ichthyo-research related activities. The license must be aboard the vessel before fishing, sampling or conducting other ichthyo-research related activities.

h. All vessels entering ports and/or waters under Canadian jurisdiction must obey Canadian maritime regulations and as appropriate must report to the Canadian Coast Guard and the Department of Fisheries and Oceans.

Procedure Number 2

a. All vessels entering ports and/or waters under Canadian jurisdiction must obey Canadian maritime regulations. A licensed or unlicenced fishing vessel must report to its Canadian representative twenty-four (24) hours before entering waters under Canadian jurisdiction and a further twenty-four (24) hours before entry into port. The representative will then inform the Canadian Coast Guard and the Department of Fisheries and Oceans who will grant or deny permission for the vessel to enter ports and/or waters under Canadian jurisdiction.

b. The vessel must provide seventy-two (72) hours prior notice to the Canadian Department of Fisheries and Oceans, through the vessel's representative, before leaving waters under Canadian jurisdiction. The Canadian Government reserves the right to inspect the vessel before it leaves waters under Canadian jurisdiction.

資料 4

1. President's Ocean Policy Statement, March 10, 1983

The United States has long been a leader in developing customary and conventional law of the sea. Our objectives have consistently been to provide a legal order that will, among other things, facilitate peaceful, international uses of the oceans and provide for equitable and effective management and conservation of marine resources. The United States also recognizes that all nations have an interest in these issues.

Last July, I announced that the United States will not sign the United Nations Law of the Sea Convention that was opened for signature on December 10.[1] We have taken this step because several major problems in the Convention's deep seabed mining provisions are contrary to the interests and principles of industrialized nations and would not help attain the aspirations of developing countries.

The United States does not stand alone in these concerns. Some important allies and friends have not signed the convention.[2] Even some signatory states have raised concerns about these problems.

However, the convention contains provisions with respect to traditional uses of the oceans which generally confirm existing maritime law and practice and fairly balance the interests of all States.

Today, I am announcing three decisions to promote and protect the oceans interests of the United States in a manner consistent with those fair and balanced results in the Convention and international law.

First, the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans—such as navigation and overflight. In this respect, the United States will recognize the rights of other States in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal States.

Second, the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the Convention. The United States will not, however, acquiesce in unilateral acts of other States designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.

Third, I am proclaiming today an Exclusive Economic Zone in which the United States will exercise sovereign rights in living and nonliving resources within 200 nautical miles of its coast. This will provide United States jurisdiction for mineral resources out to 200 nautical miles that are not on the continental shelf. Recently discovered deposits there could be an important future source of strategic minerals.

資料 5

US DEPARTMENT OF STATE
DISPATCH
BUREAU OF PUBLIC AFFAIRS
SUPPLEMENT

Law of the Sea Convention

Letters of Transmittal and Submittal and Commentary

February 1995 Vol. 6, Supplement No. 1

US DEPARTMENT OF STATE
DISPATCH
BUREAU OF PUBLIC AFFAIRS

Volume 6, Supplement No. 1 February 1995

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Law of the Sea Convention

Letters of Transmittal and Submittal And Commentary

Transmittal Letter

Text of a letter from the President to the U.S. Senate, October 7, 1994.

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to accession, the United Nations Convention on the Law of the Sea, with Annexes, done at Montego Bay, December 10, 1982 (the "Convention"), and, for the advice and consent of the Senate to ratification, the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, with Annex, adopted at New York, July 28, 1994 (the "Agreement"), and signed by the United States, subject to ratification, on July 29, 1994. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention and Agreement, as well as Resolution II of Annex I and Annex II of the Final Act of the Third United Nations Conference on the Law of the Sea.

The United States has basic and enduring national interests in the oceans and has consistently taken the view that the full range of these interests is best protected through a widely accepted international framework governing uses of the sea. Since the late 1960s, the basic U.S. strategy has been to conclude a comprehensive treaty on the law of the sea that will be respected by all countries. Each succeeding U.S. Administration has recognized this as the cornerstone of U.S. oceans policy. Following adoption of the Convention in 1982, it has been the policy of the United States to act in a manner consistent with its provisions relating to traditional uses of the oceans and to encourage other countries to do likewise.

The primary benefits of the Convention to the United States include the following:

- The Convention advances the interests of the United States as a global maritime power. It preserves the right of the U.S. military to use the world's oceans to meet national security requirements and of commercial vessels to carry sea-going cargoes. It achieves this, *inter alia*, by stabilizing the breadth of the territorial sea at 12 nautical miles; by setting forth navigation regimes of innocent passage in the territorial sea, transit passage in straits used for international navigation, and archipelagic sea lanes passage; and by reaffirming the traditional freedoms of navigation and overflight in the exclusive economic zone and the high seas beyond.
- The Convention advances the interests of the United States as a coastal State. It achieves this, *inter alia*, by providing for an exclusive economic zone out to 200 nautical miles from shore and by securing our rights regarding resources and artificial islands, installations and structures for economic purposes over the full extent of the continental shelf. These provisions fully comport with U.S. oil and gas leasing practices, domestic management of coastal fishery resources, and international fisheries agreements.
- As a far-reaching environmental accord addressing vessel source pollution, pollution from seabed activities, ocean dumping, and land-based sources of marine pollution, the Convention promotes continuing improvement in the health of the world's oceans.
- In light of the essential role of marine scientific research in understanding and managing the oceans, the Convention sets forth criteria and procedures to promote access to marine areas, including coastal waters, for research activities.
- The Convention facilitates solutions to the increasingly complex problems of the uses of the ocean—solutions that respect the essential balance between our interests as both a coastal and a maritime nation.
- Through its dispute settlement provisions, the Convention provides for mechanisms to enhance compliance by Parties with the Convention's provisions.

Notwithstanding these beneficial provisions of the Convention and bipartisan support for them, the United States decided not to sign the Convention in 1982 because of flaws in the regime it would have established for managing the development of mineral resources of the seabed beyond national jurisdiction (Part XI). It has been the consistent view of successive U.S. Administrations that this deep seabed mining regime was inadequate and in need of reform if the United States was ever to become a Party to the Convention.

Such reform has now been achieved. The Agreement, signed by the United States on July 29, 1994, fundamentally changes the deep seabed mining regime of the Convention. As described in the report of the Secretary of State, the Agreement meets the objections the United States and other industrialized nations previously expressed to Part XI. It promises to provide a stable and internationally recognized framework for mining to proceed in response to future demand for minerals.

Early adherence by the United States to the Convention and the Agreement is important to maintain a stable legal regime for all uses of the sea, which covers more than 70 percent of the surface of the globe. Maintenance of such stability is vital to U.S. national security and economic strength.

I therefore recommend that the Senate give early and favorable consideration to the Convention and to the Agreement and give its advice and consent to accession to the Convention and to ratification of the Agreement. Should the Senate give such advice and consent, I intend to exercise the options concerning dispute settlement recommended in the accompanying report of the Secretary of State.

WILLIAM J. CLINTON

Submittal Letter

Text of a letter from the Secretary of State to the President, September 23, 1994.

The President:

I have the honor to submit to you the United Nations Convention on the Law of the Sea, with Annexes, done at Montego Bay, December 10, 1982 (the Convention), and the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, with Annex, adopted at New York, July 28, 1994 (the Agreement), and signed by the United States on July 29, 1994, subject to ratification. I recommend that the Convention and the Agreement be transmitted to the Senate for its advice and consent to accession and ratification, respectively.

The Convention sets forth a comprehensive framework governing uses of the oceans. It was adopted by the Third United Nations Conference on the Law of the Sea (the Conference), which met between 1973 and 1982 to negotiate a comprehensive treaty relating to the law of the sea.

The Agreement, adopted by United Nations General Assembly Resolution A/RES/48/263 on July 28, 1994, contains legally binding changes to that part of the Convention dealing with the mining of the seabed beyond the limits of national jurisdiction (Part XI and related Annexes) and is to be applied and interpreted together with the Convention as a single instrument. The Agreement promotes universal adherence to the Convention by removing obstacles to acceptance of the Convention by industrialized nations, including the United States.

I also recommend that Resolution II of Annex I, governing preparatory investment in pioneer activities relating to polymetallic nodules, and Annex II, a statement of understanding concerning a specific method to be used in establishing the outer edge of the continental margin, of the Final Act of the Third United Nations Conference on the Law of the Sea be transmitted to the Senate for its information.

The Convention

The Convention provides a comprehensive framework with respect to uses of the oceans. It creates a structure for the governance and protection of all marine areas, including the airspace above and the seabed and subsoil below. After decades of dispute and negotiation, the Convention reflects consensus on the extent of jurisdiction that States may exercise off their coasts and allocates rights and duties among States.

The Convention provides for a territorial sea of a maximum breadth of 12 nautical miles and coastal State sovereign rights over fisheries and other natural resources in an Exclusive Economic Zone (EEZ) that may extend to 200 nautical miles from the coast. In so doing, the Convention brings most fisheries under the jurisdiction of coastal States. (Some 90 percent of living marine resources are harvested within 200 nautical miles of the coast.)

The Convention imposes on coastal States a duty to conserve these resources, as well as obligations upon all States to cooperate in the conservation of fisheries populations on the high seas and such populations that are found both on the high seas and within the EEZ (highly migratory stocks, such as tuna, as well as "straddling stocks"). In addition, it provides for special protective measures for anadromous species, such as salmon, and for marine mammals, such as whales.

The Convention also accords the coastal State sovereign rights over the exploration and development of nonliving resources, including oil and gas, found in the seabed and subsoil of the continental shelf, which is defined to extend to 200 nautical miles from the coast or, where the continental margin extends beyond that limit, to the outer edge of the geological continental margin. It lays down specific criteria and procedures for determining the outer limit of the margin.

The Convention carefully balances the interests of States in controlling activities off their own coasts with those of all States in protecting the freedom to use ocean spaces without undue interference. It specifically preserves and elaborates the rights of military and commercial navigation and overflight in areas under coastal State jurisdiction and on the high seas beyond. It guarantees passage for all ships and aircraft through, under and over straits used for international navigation and archipelagos. It also guarantees the high seas freedoms of navigation, overflight and the laying and maintenance of submarine cables and pipelines in the EEZ and on the continental shelf.

For the non-living resources of the seabed beyond the limits of national jurisdiction (i.e., beyond the EEZ or continental margin, whichever is further seaward), the Convention establishes an international regime to govern exploration and exploitation of such resources. It defines the general conditions for access to deep seabed minerals by commercial entities and provides for the establishment of an international organization, the International Seabed Authority, to grant title to mine sites and establish necessary ground rules. The system was substantially modified by the 1994 Agreement, discussed below.

The Convention sets forth a comprehensive legal framework and basic obligations for protecting the marine environment from all sources of pollution, including pollution from vessels, from dumping, from seabed activities and from land-based activities. It creates a positive and unprecedented regime for marine environmental protection that will compel parties to come together to address issues of common and pressing concern. As such, the Convention is the strongest comprehensive environmental treaty now in existence or likely to emerge for quite some time.

The essential role of marine scientific research in understanding and managing the oceans is also secured. The Convention affirms the right of all States to conduct marine scientific research and sets forth obligations to

promote and cooperate in such research. It confirms the rights of coastal States to require consent for such research undertaken in marine areas under their jurisdiction. These rights are balanced by specific criteria to ensure that coastal States exercise the consent authority in a predictable and reasonable fashion to promote maximum access for research activities.

The Convention establishes a dispute settlement system to promote compliance with its provisions and the peaceful settlement of disputes. These procedures are flexible, in providing options as to the appropriate means and fora for resolution of disputes, and comprehensive, in subjecting the bulk of the Convention's provisions to enforcement through binding mechanisms. The system also provides Parties the means of excluding from binding dispute settlement certain sensitive political and defense matters.

Further analysis of provisions of the Convention's 17 Parts, comprising 320 articles and nine Annexes, is set forth in the Commentary that is enclosed as part of this Report.

The Agreement

The achievement of a widely accepted and comprehensive law of the sea convention—to which the United States can become a Party—has been a consistent objective of successive U.S. administrations for the past quarter century. However, the United States decided not to sign the Convention upon its adoption in 1982 because of objections to the regime it would have established for managing the development of seabed mineral resources beyond national jurisdiction. While the other Parts of the Convention were judged beneficial for U.S. ocean policy interests, the United States determined the deep seabed regime of Part XI to be inadequate and in need of reform before the United States could consider becoming Party to the Convention.

Similar objections to Part XI also deterred all other major industrialized nations from adhering to the Convention. However, as a result of the important international political and economic changes of the last decade—including the end of the Cold War and growing reliance on free market principles—widespread recognition emerged that the seabed mining regime of the Convention required basic change in order to make it generally acceptable. As a result, informal negotiations were launched in 1990, under the auspices of the United Nations Secretary-General, that resulted in adoption of the Agreement on July 28, 1994.

The legally binding changes set forth in the Agreement meet the objections of the United States to Part XI of the Convention. The United States and all other major industrialized nations have signed the Agreement.

The provisions of the Agreement overhaul the decision-making procedures of Part XI to accord the United States, and others with major economic interests at stake, adequate influence over future decisions on possible deep seabed mining. The Agreement guarantees a seat for the United States on the critical executive body and requires a consensus of major contributors for financial decisions.

The Agreement restructures the deep seabed mining regime along free market principles and meets the U.S. goal of guaranteed access by U.S. firms to deep seabed minerals on the basis of reasonable terms and conditions. It eliminates mandatory transfer of technology and production controls. It scales back the structure of the organization to administer the mining regime and links the activation and operation of institutions to the actual development of concrete commercial interest in seabed mining. A future decision, which the United States and a few of its allies can block, is required before the organization's potential operating arm (the Enterprise) may be activated, and any activities on its part are subject to the same requirements that apply to private mining companies. States have no obligation to finance the Enterprise, and subsidies inconsistent with GATT are prohibited.

The Agreement provides for grandfathering the seabed mine site claims established on the basis of the exploration work already conducted by companies holding U.S. licenses on the basis of arrangements "similar to and no less favorable than" the best terms granted to previous claimants; further, it strengthens the provisions requiring consideration of the potential environmental impacts of deep seabed mining.

The Agreement provides for its provisional application from November 16, 1994, pending its entry into force. Without such a provision, the Convention would enter into force on that date with its objectionable seabed mining provisions unchanged. Provisional application may continue only for a limited period, pending entry into force. Provisional application would terminate on November 16, 1998, if the Agreement has not entered into force due to failure of a sufficient number of industrialized States to become Parties. Further, the Agreement provides flexibility in allowing States to apply it provisionally in accordance with their domestic laws and regulations.

In signing the agreement on July 29, 1994, the United States indicated that it intends to apply the agreement provisionally pending ratification. Provisional application by the United States will permit the advancement of U.S. seabed mining interests by U.S. participation in the International Seabed Authority from the outset to ensure that the implementation of the regime is consistent with those interests, while doing so consistent with existing laws and regulations.

Further analysis of the Agreement and its Annex, including analysis of the provisions of Part XI of the Convention as modified by the Agreement, is also set forth in the Commentary that follows.

Status of the Convention And the Agreement

One hundred and fifty-two States signed the Convention during the two years it was open for signature. As of September 8, 1994, 65 States had deposited their instruments of ratification, accession or succession to the Convention. The Convention will enter into force for these States on November 16, 1994, and thereafter for other States 30 days after deposit of their instruments of ratification or accession.

The United States joined 120 other States in voting for adoption of the Agreement on July 28, 1994; there were no negative votes and seven abstentions. As of September 8, 1994, 50 States and the European Community have signed the Agreement, of which 19 had previously ratified the Convention. Eighteen developed States have signed the Agreement, including the United States, all the members of the European Community, Japan, Canada and Australia, as well as major developing countries, such as Brazil, China and India.

Relation to the 1958 Geneva Conventions

Article 311(1) of the LOS Convention provides that the Convention will prevail, as between States Parties, over the four Geneva Conventions on the Law of the Sea of April 29, 1958, which are currently in force for the United States: the Convention on the Territorial Sea and the Contiguous Zone, 15 UST 1606, TIAS. No. 5639, 516 UNTS 205 (entered into force September 10, 1964); the Convention on the High Seas, 13 UST. 2312, TIAS. No. 5200, 450 UNTS 82 (entered into force September 30, 1962); Convention on the Continental Shelf, 15 UST 471, TIAS No. 5578, 499 UNTS 311 (entered into force June 10, 1964); and the Convention on Fishing and Conservation of Living Resources of the High Seas, 17 UST 138, TIAS No. 5969, 559 UNTS 285 (entered into force March 20, 1966). Virtually all of the provisions of these Conventions are either repeated, modified, or replaced by the provisions of the LOS Convention.

Dispute Settlement

The Convention identifies four potential fora for binding dispute settlement:

- The International Tribunal for the Law of the Sea constituted under Annex VI;
- The International Court of Justice;
- An arbitral tribunal constituted in accordance with Annex VII; and
- A special arbitral tribunal constituted in accordance with Annex VIII for specified categories of disputes.

A State, when adhering to the Convention, or at any time thereafter, is able to choose, by written declaration, one or more of these means for the settlement of disputes under the Convention. 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. If a Party has failed to announce its choice of forum, it is deemed to have accepted arbitration in accordance with Annex VII.

I recommend that the United States choose special arbitration for all the categories of disputes to which it may be applied and Annex VII arbitration for disputes not covered by the above, and thus that the United States make the following declaration:

> The Government of the United States of America declares, in accordance with paragraph 1 of Article 287, that it chooses the following means for the settlement of disputes concerning the interpretation or application of the Convention:
>
> (A) a special arbitral tribunal constituted in accordance with Annex VIII for the settlement of disputes concerning the interpretation or application of the articles of the Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping, and
>
> (B) an arbitral tribunal constituted in accordance with Annex VII for the settlement of disputes not covered by the declaration in (A) above.

Subject to limited exceptions, the Convention excludes from binding dispute settlement disputes relating to the sovereign rights of coastal States with respect to the living resources in their EEZs. In addition, the Convention permits a State to opt out of binding dispute settlement procedures with respect to one or more enumerated categories of disputes, namely disputes regarding maritime boundaries between neighboring States, disputes concerning military activities and certain law enforcement activities, and disputes in respect of which the United Nations Security Council is exercising the functions assigned to it by the Charter of the United Nations.

I recommend that the United States elect to exclude all three of these categories of disputes from binding dispute settlement, and thus that the United States make the following declaration:

> The Government of the United States of America declares, in accordance with paragraph 1 of Article 298, that it does not accept the procedures provided for in section 2 of Part XV with respect to the categories of disputes set forth in subparagraphs (a), (b) and (c) of that paragraph.

Recommendation

The interested Federal agencies and departments of the United States have unanimously concluded that our interests would be best served by the United States becoming a Party to the Convention and the Agreement.

The primary benefits of the Convention to the United States include the following:

- The Convention advances the interests of the United States as a global maritime power. It preserves the right of the U.S. military to use the world's oceans to meet national security requirements and of commercial vessels to carry sea-going cargoes. It achieves this, *inter alia*, by stabilizing the breadth of the territorial sea at 12 nautical miles; by setting forth navigation regimes of innocent passage in the territorial sea, transit passage in straits used for international navigation, and archipelagic sea lanes passage; and by reaffirming the traditional freedoms of navigation and overflight in the EEZ and the high seas beyond.
- The Convention advances the interests of the United States as a coastal State. It achieves this, *inter alia*, by providing for an EEZ out to 200 nautical miles from shore and by securing our rights regarding resources and artificial islands, installations and structures for economic purposes over the full extent of the continental shelf. These provisions fully comport with U.S. oil and gas leasing practices, domestic management of coastal fishery resources, and international fisheries agreements.
- As a far-reaching environmental accord addressing vessel source pollution, pollution from seabed activities,

ocean dumping and land-based sources of marine pollution, the Convention promotes continuing improvement in the health of the world's oceans.

• In light of the essential role of marine scientific research in understanding and managing the oceans, the Convention sets forth criteria and procedures to promote access to marine areas, including coastal waters, for research activities.

• The Convention facilitates solutions to the increasingly complex problems of the uses of the ocean—solutions which respect the essential balance between our interests as both a coastal and a maritime nation.

• Through its dispute settlement provisions, the Convention provides for mechanisms to enhance compliance by Parties with the Convention's provisions.

• The Agreement fundamentally changes the deep seabed mining regime of the Convention. It meets the objections the United States and other industrialized nations previously expressed to Part XI. It promises to provide a stable and internationally recognized framework for mining to proceed in response to future demand for minerals.

The United States has been a leader in the international community's effort to develop a widely accepted international framework governing uses of the seas. As a Party to the Convention, the United States will be in a position to continue its role in this evolution and ensure solutions that respect our interests.

All interested agencies and departments, therefore, join the Department of State in unanimously recommending that the Convention and Agreement be transmitted to the Senate for its advice and consent to accession and ratification respectively. They further recommend that they be transmitted before the Senate adjourns *sine die* this fall.

The Department of State, along with other concerned agencies, stands ready to work with Congress toward enactment of legislation necessary to carry out the obligations assumed under the Convention and Agreement and to permit the United States to exercise rights granted by the Convention.

WARREN CHRISTOPHER

Commentary—The 1982 United Nations Convention on the Law of the Sea and the Agreement on Implementation of Part XI

INTRODUCTION

The United Nations Convention on the Law of the Sea, opened for signature on December 10, 1982 (the Convention or LOS Convention) creates a structure for the governance and protection of all of the sea, including the airspace above and the sea-bed and subsoil below. In particular, it provides a framework for the allocation of jurisdiction, rights and duties among States that carefully balances the interests of States in controlling activities off their own coasts and the interests of all States in protecting the freedom to use ocean spaces without undue interference.

This Commentary begins with a discussion of the maritime zones recognized by the Convention, emphasizing the rules regarding navigation and overflight in these areas. Next, the framework for the protection and preservation of the marine environment of these areas is examined. Thereafter, the Commentary reviews the regimes for dealing with the resources in these areas under the following headings:

• Living marine resources, including fishing;

• Non-living resources, including those of the continental shelf and the deep sea-bed beyond the limits of national jurisdiction; and,

• Marine scientific research.

The various mechanisms for settling disputes regarding these provisions are next examined. Finally, the Commentary considers other provisions of the Convention, including those relating to maritime boundary delimitation, enclosed and semi-enclosed seas, land-locked and geographically disadvantaged States, and technology transfer, as well as the definitions and the general and final provisions of the Convention.

MARITIME ZONES

The Convention addresses the balance of coastal and maritime interests with respect to all areas of the sea. From the absolute sovereignty that every State exercises over its land territory and superjacent airspace, the exclusive rights and control that the coastal State exercises over maritime areas off its coast diminish in stages as the distance from the coastal State increases. Conversely, the rights and freedoms of maritime States are at their maximum in regard to activities on the high seas and gradually diminish closer to the coastal State. The balance of interests between the coastal State and maritime States thus varies in each zone recognized by the Convention.

The location of these zones under the Convention may be summarized as follows (and is illustrated in Figure 1).

Internal waters are landward of the baselines along the coast. They include lakes, rivers and many bays.

Archipelagic waters are encircled by archipelagic baselines established by independent archipelagic States.

The territorial sea extends seaward from the baselines to a fixed distance. The Convention establishes 12 nautical miles as the maximum permissible breadth of the territorial sea. (One nautical mile equals 1,852 meters or 6,067 feet; all further references to miles in this Commentary are to nautical miles.)

The contiguous zone, exclusive economic zone (EEZ) and continental shelf all begin at the seaward limit of the territorial sea.

The contiguous zone may extend to a maximum distance of 24 miles from the baselines.

The EEZ may extend to a maximum distance of 200 miles from the baselines.

The continental shelf may extend to a distance of 200 miles from the baselines or, if the continental margin extends beyond that limit, to the outer edge of the continental margin as defined by the Convention. The regime of the continental shelf applies to the sea-bed and subsoil and does not affect the status of the superjacent waters or airspace.

The regime of the high seas applies seaward of the EEZ; significant parts of that regime, including freedom of navigation and overflight, also apply within the EEZ.

The sea-bed beyond national jurisdiction, called the Area in the Convention, comprises the sea-bed and subsoil beyond the seaward limit of the continental shelf.

Internal Waters

Article 8(1) defines internal waters as the waters on the landward side of the baseline from which the breadth of the territorial sea is measured. This definition carries forward the traditional definition of internal waters found in article 5 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, 15 UST 1606, TIAS No. 5639, 516 UNTS 205 (Territorial Sea Convention). The importance of baselines and the rules relating to them are discussed in the next section.

Territorial Sea

Article 2 describes the territorial sea as a belt of ocean which is measured seaward from the baseline of the coastal State and subject to its sovereignty. This sovereignty also extends to the airspace above and to the sea-bed and subsoil. It is exercised subject to the Convention and other rules of international law relating to innocent passage, transit passage, archipelagic sea lanes passage and protection of the marine environment. Under article 3, the coastal State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 miles, measured from baselines determined in accordance with the Convention.

The adoption of the Convention has significantly influenced State practice. Prior to 1982, as many as 25 States claimed territorial seas broader than 12 miles (with attendant detriment to the freedoms of navigation and overflight essential to U.S. national security and commercial interests), while 30 States, including the United States, claimed a territorial sea of less than 12 miles. Since 1983, State practice in asserting territorial sea claims has largely coalesced around the 12 mile maximum breadth set by the Convention. As of January 1, 1994 128 States claim a territorial sea of 12 miles or less; only 17 States claim a territorial sea broader than 12 miles.

Since 1988, the United States has claimed a 12 mile territorial sea (Presidential Proclamation 5928, December 27, 1988). Since the President's Ocean Policy Statement of March 10, 1983, the United States has recognized territorial sea claims of other States up to a maximum breadth of 12 miles.

Contiguous Zone

Article 33 recognizes the contiguous zone as an area adjacent to the territorial sea in which the coastal State may exercise the limited control necessary to prevent or punish infringement of its customs, fiscal, immigration, and sanitary laws and regulations that occurs within its territory or territorial sea. Unlike the territorial sea, the contiguous zone is not subject to coastal State sovereignty; vessels and aircraft enjoy the same high seas freedom of navigation and overflight in the contiguous zone as in the EEZ. The maximum permissible breadth of the contiguous zone is 24 miles measured from the baseline from which the breadth of the territorial sea is measured.

In 1972, the United States claimed a contiguous zone beyond its territorial sea (historically claimed as 3 miles) out to 12 miles from the coastal baselines (Department of State Public Notice 358, 37 Federal Register 11,906). Since 1988, when the United States extended its territorial sea to 12 miles, the U.S. contiguous zone and territorial sea claims have thus been coterminous. Under the Convention, the United States could set the seaward limit of its contiguous zone at 24 miles, enhancing its ability to deal with illegal immigration, drug trafficking by sea and public health matters.

Exclusive Economic Zone (EEZ)

The establishment of the EEZ in the Convention represents a substantial change in the law of the sea. The underlying purpose of the EEZ regime is to balance the rights of coastal States, such as the United States, to resources

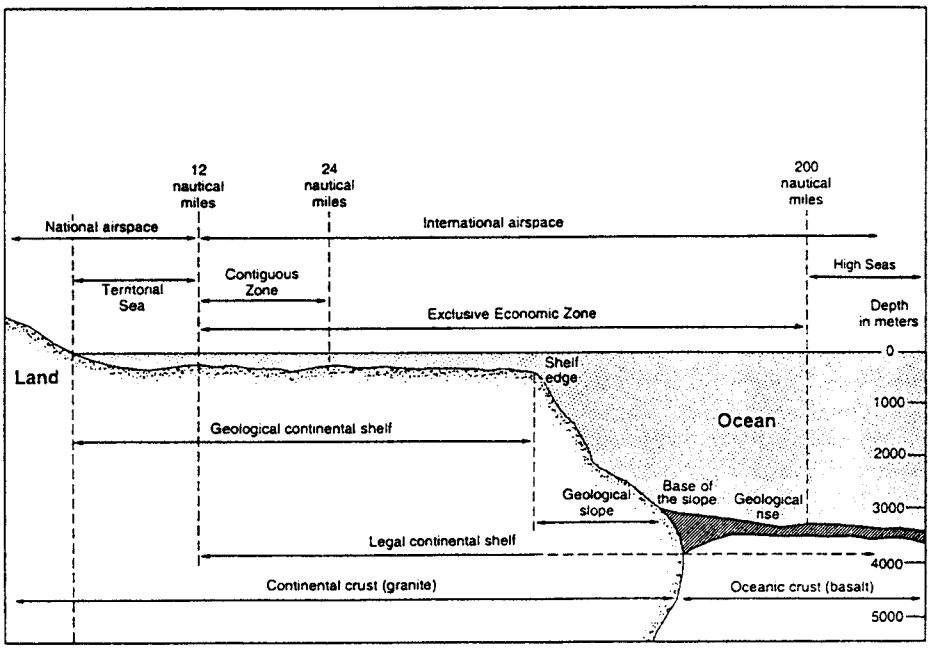

Figure 1. The Legal Regimes and Geomorphic Regions

(e.g., fisheries and offshore oil and gas) and to protect the environment off their coasts with the interests of all States in preserving other high seas rights and freedoms.

Article 55 defines the EEZ as an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in Part V, which elaborates the jurisdiction, rights and duties of the coastal State and the rights, freedoms and duties of other States. Pursuant to article 56, the coastal State exercises sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of the EEZ, whether living or non-living. It also has significant rights in the EEZ with respect to scientific research and the protection and preservation of the marine environment. The coastal State does not have sovereignty over the EEZ, and all States enjoy the high seas freedoms of navigation, overflight, laying and maintenance of submarine cables and pipelines, and related uses in the EEZ, compatible with other Convention provisions. However, all States have a duty, in the EEZ, to comply with the laws and regulations adopted by the coastal State in accordance with the Convention and other compatible rules of international law.

Article 57 requires the seaward limit of the EEZ to be no more than 200 miles from the baseline from which the breadth of the territorial sea is measured. The United States declared its EEZ with this limit by Presidential Proclamation 5030 on March 10, 1983. Congress incorporated the claim in amending the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*, Pub. L. 99-659.

As of March 1, 1994, 93 States claim an EEZ. No State claims an EEZ beyond 200 miles from its coastal baselines, although, as discussed below in the section on navigation and overflight, several States claim the right to restrict activities within their EEZs beyond that which the Convention authorizes.

The EEZ of the United States is among the largest in the world, extending through considerable areas of the Atlantic, Pacific and Arctic Oceans, including those around U.S. insular territories. From the perspective of managing and conserving resources off its coasts, the United States gains more from the provisions on the EEZ in the Convention than perhaps any other State.

High Seas

Pursuant to article 86, the regime of the high seas applies seaward of the EEZ. The Convention elaborates the regime of the high seas, including the principles of the freedom of the high seas, as it developed over centuries, and supplements the regime with new safety and environmental requirements and express recognition of the freedom of scientific research. As discussed below in connection with living marine resources, the Convention makes the right to fish on the high seas subject to significant additional requirements relating to conservation and to certain rights, duties and interests of coastal States.

Continental Shelf

Pursuant to article 76, the continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 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. The coastal State alone exercises sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources. The natural resources of the continental shelf consist of the mineral and other non-living resources of the sea-bed and subsoil together with the living organisms belonging to sedentary species. Substantial deposits of oil and gas are located in the continental shelf off the coasts of the United States and other countries.

The Sea-bed Beyond National Jurisdiction

The Convention defines as the Area the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction. Possible exploration and development of the mineral resources found at or beneath the sea-bed of the Area are to be undertaken pursuant to the international regime established by the Convention, as revised by the Agreement, on the basis of the principle that these resources are the common heritage of mankind. The Area remains open to use by all States for the exercise of high seas freedoms for defense, scientific research, telecommunications and other purposes.

Airspace

The Convention does not treat airspace as distinct zones. However, its provisions affirm that the sovereignty of a coastal State extends to the airspace over its land territory, internal waters and territorial sea. The breadth of territorial airspace is necessarily the same as the breadth of the underlying territorial sea. International airspace begins at the outer limit of the territorial sea.

BASELINES

A State's maritime zones are measured from the baseline. The rules for drawing baselines are contained in articles 5 through 11, 13 and 14 of the Convention. These rules distinguish between *normal* baselines (following the low-water mark along the coast) and *straight* baselines (which can be employed only in specified geographical situations). The baseline rules take into account most of the wide variety of geographical conditions existing along the coastlines of the world.

Baseline claims can extend maritime jurisdiction significantly seaward in a manner that prejudices navigation, overflight and other interests. Objective application of baseline rules contained in the Convention can help prevent excessive claims in the future and encourage governments to revise existing claims to conform to the relevant criteria.

Normal Baseline

Pursuant to article 5, the normal baseline used for measuring the breadth of the territorial sea is the low-water line along the coast. U.S. practice is consistent with this rule.

Reefs. In accordance with article 6, in the case of islands situated on atolls or of islands having fringing reefs, the normal baseline is the seaward low-water line on the drying reef charted as being above the level of chart datum. While the Convention does not address reef closing lines, any such line is not to adversely affect rights of passage, freedom of navigation, and other rights for which the Convention provides.

Straight Baselines

Purpose. The purpose of authorizing the use of straight baselines is to allow the coastal State, at its discretion, to enclose those waters which, as a result of their close interrelationship with the land, have the character of internal waters. By using straight baselines, a State may also eliminate complex patterns, including enclaves, in its territorial sea, that would otherwise result from the use of normal baselines in accordance with article 5. Properly drawn straight baselines do not result in extending the limits of the territorial sea significantly seaward from those that would result from the use of normal baselines.

With the advent of the EEZ, the original reason for straight baselines (protection of coastal fishing interests) has all but disappeared. Their use in a manner that prejudices international navigation, overflight, and communications interests runs counter to the thrust of the Convention's strong protection of these interests. In light of the modernization of the law of the sea in the Convention, it is reasonable to conclude that, as the Convention states, straight baselines are not normal baselines, straight baselines should be used sparingly, and, where they are used, they should be drawn conservatively to reflect the one rationale for their use that is consistent with the Convention, namely the simplification and rationalization of the measurement of the territorial sea and other maritime zones off highly irregular coasts.

Areas of Application. Straight baselines, in accordance with article 7, may be used only in two specific geographic circumstances, that is, (a) in localities where the coastline is deeply indented and cut into, or (b) if there is a fringe of islands along the coast in the immediate vicinity of the coast. Even if these basic geographic criteria exist in any particular locality, the coastal State is not obliged to employ the method of straight baselines, but may (like the United States and other countries) instead continue to use the normal baseline and permissible closing lines across the mouths of rivers and bays.

"Localities Where the Coastline Is Deeply Indented and Cut Into." "Deeply indented and cut into" refers to a very distinctive coastal configuration. The United States has taken the position that such a configuration must fulfill all of the following characteristics:

- In a locality where the coastline is deeply indented and cut into, there exist at least three deep indentations;
- The deep indentations are in close proximity to one another; and
- The depth of penetration of each deep indentation from the proposed straight baseline enclosing the indentation at its entrance to the sea is, as a rule, greater than half the length of that baseline segment.

The term "coastline" is the mean low-water line along the coast; the term "localities" refers to particular segments of the coastline.

"Fringe of Islands Along the Coast In the Immediate Vicinity of the Coast." "Fringe of islands along the coast in the immediate vicinity of the coast" refers to a number of islands, within the meaning of article 121(1). The United States has taken the position that a such a fringe of islands must meet all of the following requirements:

- The most landward point of each island lies no more than 24 miles from the mainland coastline;
- Each island to which a straight baseline is to be drawn is not more than 24 miles apart from the island from which the straight baseline is drawn; and
- The islands, as a whole, mask at least 50% of the mainland coastline in any given locality.

Criteria for Drawing Straight Baseline Segments. The United States has taken the position that, to be consistent with article 7(3), straight baseline segments must:

- Not depart to any appreciable extent from the general direction of the coastline, by reference to general direction lines which in each locality shall not exceed 60 miles in length;
- Not exceed 24 miles in length; and
- Result in sea areas situated landward of the straight baseline segments that are sufficiently closely linked to the land domain to be subject to the regime of internal waters.

Minor Deviations. Straight baselines drawn with minor deviations from the foregoing criteria are not necessarily inconsistent with the Convention.

Economic Interests. Economic interests alone cannot justify the location of particular straight baselines. In determining the alignment of particular straight baseline segments of a baseline system which satisfies the deeply indented or fringing islands criteria, in accordance with article 7(5), only those economic interests may be taken into account which are peculiar to the region concerned and only when the reality and importance of the economic interests are clearly evidenced by long usage.

Basepoints. Except as noted in article 7(4), basepoints for all straight baselines must be located on land territory and situated on or landward of the low-water line. No straight baseline segment may be drawn to a basepoint located on the land territory of another State.

Use of Low-tide Elevations as Basepoints In a System of Straight Baselines. In accordance with article 7(4), only those low-tide elevations which have had built on them lighthouses or similar installations may be used as basepoints for establishing straight baselines. Other low-tide elevations may not be used as basepoints unless the drawing of baselines to and

from them has received general international recognition. The United States has taken the position that "similar installations" are those that are permanent, substantial and actually used for safety of navigation and that "general international recognition" includes recognition by the major maritime users over a period of time.

Effect on Other States. Article 7(6) provides that a State may not apply the system of straight baselines in such a manner as to cut off the territorial sea of another State from the high seas or an EEZ. In addition, article 8(2) provides that, where the establishment of a straight baseline has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in the Convention shall exist in those waters. Article 35(a) has the same effect with respect to the right of transit passage through straits.

Unstable Coastlines. As provided in article 7(2), where a coastline, which is deeply indented and cut into or fringed with islands in its immediate vicinity, is also highly unstable because of the presence of a delta or other natural conditions, the appropriate basepoints may be located along the furthest seaward extent of the low-water line. The straight baseline segments drawn joining these basepoints remain effective, notwithstanding subsequent regression of the low-water line, until the baseline segments are changed by the coastal State in accordance with international law reflected in the Convention.

Other Baseline Rules

Low-tide Elevations. Under article 13, the low-water line on a low-tide elevation may be used as the baseline for measuring the breadth of the territorial sea only where that elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea measured from the mainland or an island. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, even if it is within that distance measured from a straight baseline or bay closing line, it has no territorial sea of its own. Low-tide elevations can be mud flats, or sand bars.

Combination of Methods. Article 14 authorizes the coastal State to determine each baseline segment using any of the methods permitted by the Convention that suit the specific geographic condition of that segment, i.e., the methods for drawing normal baselines, straight baselines, or closing lines (discussed below).

Harbor Works. In accordance with article 11, only those permanent man-made harbor works which form an integral part of a harbor system, such as jetties, moles, quays, wharves, breakwaters and sea walls, may be used as part of the baseline for delimiting the territorial sea.

Mouths of Rivers. If a river flows directly into the sea without forming an estuary, pursuant to article 9, the baseline shall be a straight line drawn across the mouth of the river between points on the low-water line of its banks. If the river forms an estuary, the baseline is determined under the provisions relating to juridical bays.

BAYS AND OTHER FEATURES

Juridical Bays

A "juridical bay" is a bay meeting the criteria of article 10(2). Such a bay is a well-marked indentation on the coast 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 is not a juridical 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.

For the purpose of measurement, article 10(3) provides that the indentation is that area 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 for satisfaction of the semi-circle test.

Under article 10(4), if the distance between the low-water marks of the natural entrance points of a juridical bay of a single State does not exceed 24 miles, the juridical bay may be defined by drawing a closing line between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters. Where the distance between the low-water marks exceed 24 miles, a straight baseline of 24 miles shall be drawn within the juridical bay in such a manner as to enclose the maximum area of water that is possible within a line of that length.

Historic Bays

Article 10(6) exempts so-called historic bays from the rules described above. To meet the standard of customary international law for establishing a claim to a historic bay, a State must demonstrate its open, effective, long-term, and continuous exercise of authority over the bay, coupled with acquiescence by foreign States in the exercise of that authority. An actual showing of acquiescence by foreign States in such a claim is required, as opposed to a mere absence of opposition. The United States has in the past claimed Delaware Bay and the Chesapeake Bay as historic. These bodies also satisfy the criteria for juridical bays reflected in the Convention.

Charts and Publication

Article 16(1) requires that the normal baseline be shown on large-scale nautical charts, officially recognized by the coastal State. Alternatively, the coastal State must provide a list of geographic coordinates specifying the geodetic data. The United States depicts its baseline on official charts with scales ranging from 1:80,000 to about 1:200,000. Drying reefs used for

locating basepoints shall be shown by an internationally accepted symbol for depicting such reefs on nautical charts, pursuant to article 6.

To comply with article 16(2), the coastal State must give due publicity to such charts or lists of geographical coordinates, and deposit a copy of each such chart or list with the Secretary-General of the United Nations.

Closure lines for bays meeting the semi-circle test must be given due publicity, either by chart indications or by listed geographic coordinates.

Islands

Article 121(1) defines an island as a naturally formed area of land, surrounded by water, which is above water at high tide. Baselines are established on islands, and maritime zones are measured from those baselines, in the same way as on other land territory. In addition, as previously indicated, there are special rules for using islands in drawing straight baselines and bay closing lines, and even low-tide elevations (which literally do not rise to the status of islands) may be used as basepoints in specified circumstances. These special rules are not affected by the provision in article 121(3) that rocks which cannot sustain human habitation or economic life of their own shall have no EEZ or continental shelf.

Artificial Islands and Off-shore Installations

Pursuant to articles 11, 60(8), 147(2) and 259, artificial islands, installations and structures (including such man-made objects as oil drilling rigs, navigational towers, and off-shore docking and oil pumping facilities) do not possess the status of islands, and may not be used to establish baselines, enclose internal waters, or establish or measure the breadth of the territorial sea, EEZ or continental shelf. Articles 60, 177(2), and 260 provide criteria for establishing safety zones of limited breadth to protect artificial islands, installations and structures and the safety of navigation in their vicinity.

Roadsteads

Article 12 provides that roadsteads normally used for the loading, unloading, and anchoring of ships, and which would otherwise be situated wholly or partly beyond the outer limits of the territorial sea, are included within the territorial sea. Roadsteads included within the territorial sea must be clearly marked on charts by the coastal State. Only the roadstead itself is territorial sea; roadsteads do not generate territorial seas around themselves; the presence of a roadstead does not change the legal status of the water surrounding it.

NAVIGATION AND OVERFLIGHT

Internal Waters, Territorial Sea, Straits, Archipelagic States, Exclusive Economic Zone, And High Seas (Parts II-V, VII)

Parts II-V and VII of the Convention contain a critical, effective and delicate balance between the interests of the international community in maintaining the freedom of navigation and those of coastal States in their offshore areas. As discussed in the previous section of this Commentary, the Convention creates a distinct legal regime for each maritime zone. This section analyzes the rules set forth in each of these regimes regarding the rights, duties and jurisdiction of coastal States and maritime States relating to navigation and overflight.

The maritime zones off the coasts of the United States are among the largest and most economically productive in the world. The United States also remains the world's preeminent maritime power. Accordingly, the importance to the United States in maintaining the complex balance of interests represented by these provisions of the Convention cannot be overstated.

There are five elements of the Convention essential to the maintenance of this balance from the perspective of navigation, overflight, telecommunications, and related uses:

- The rules for enclosing internal waters and archipelagic waters within baselines, and the prohibition on territorial sea claims beyond 12 miles from those baselines;
- The express protection for and accommodation of passage rights through internal waters, the territorial sea, and archipelagic waters, including transit passage of straits and archipelagic sea lanes passage, as well as innocent passage;
- The express protection for and accommodation of the high seas freedoms of navigation, overflight, laying and maintenance of submarine cables and pipelines, and related uses beyond the territorial sea, including broad areas where there are substantial coastal State rights and jurisdiction, such as the EEZ and the continental shelf;
- The prohibition on regional arrangements in areas that restrict the exercise of these rights and freedoms by third States without their consent; and
- The right to enforce this balance through arbitration or adjudication.

Rights, freedoms and jurisdiction recognized and established by the Convention are subject to Part XII of the Convention on the Protection and Preservation of the Marine Environment, discussed below. This includes the duty of the flag State to ensure that its ships comply with international pollution control standards, and the rule of sovereign immunity set forth in article 236.

Internal Waters

Internal waters are those landward of the baseline. Article 2 makes clear the generally recognized rule that coastal State sovereignty extends to internal waters. In articles 218 and 220, the Convention adds to general notions of sovereignty and jurisdiction over internal waters by expressly authorizing port State enforcement action within internal waters for pollution violations that have occurred elsewhere. This authorization does not imply any limitation on other enforcement actions that coastal States may choose to exercise in their ports or other internal waters.

Subject to ancient customs regarding the entry of ships in danger or distress (*force majeure*) and the exception noted below, the Convention does not limit the right of the coastal State

to restrict entry into or transit through its internal waters, port entry, imports or immigration.

The exception to the right of the coastal State to deny entry into or transit through its internal waters is found in article 8(2), which provides:

> When the establishment of a straight baseline . . . 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.

If a foreign flag vessel is found in a coastal State's internal waters without its permission, the full range of reasonable enforcement procedures is available against a foreign commercial vessel. With respect to foreign warships and other government ships on non-commercial service, which are immune from the enforcement jurisdiction of all States except the flag State, it may be inferred that a coastal State may require such a vessel to leave its internal waters immediately (cf. article 30). In addition, a port State has the right to refuse to permit foreign ships from entering or remaining within its internal waters.

Territorial Sea

Right of Innocent Passage. One of the fundamental tenets in the international law of the sea is that all ships enjoy the right of innocent passage through another State's territorial sea. (Innocent passage does not include a right of overflight or submerged passage.) This principle finds expression in article 17, and is developed further throughout Section 3 of Part II of the Convention (articles 17-32). These precise and objective rules governing innocent passage represent a significant advance in development of law of the sea concepts.

The Convention defines "passage" (article 18) and "innocent passage" (article 19), and lists those activities considered to be non-innocent or "prejudicial to the peace, good order or security of the coastal State" (article 19(2)(a)-(l)).

The definition of passage in article 18 is essentially the same as that in article 14(2) and (3) of the Territorial Sea Convention. Three new elements appear in article 18. First, the Convention recognizes that ports of a coastal State may be located outside that State's internal waters (as, for example, a roadstead or an offshore deep water port). Second, the Convention makes explicit that passage through the territorial sea must be continuous and expeditious. Third, the Convention provides that passage includes stopping and anchoring for the purpose of rendering assistance to persons, ships or aircraft in danger or distress, thereby expanding upon the customary right of "assistance entry."

Article 19(2) adds to the basic definition of innocent passage, i.e., that passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal State, an all-inclusive list of activities considered to be prejudicial to the peace, good order, and security, and therefore inconsistent with innocent passage. (Such activities do not include the use of equipment employed to protect the safety or security of the ship.) This list provides criteria by which States can determine whether a particular passage is innocent.

Article 19(2) refers to activities that occur in the territorial sea. This means that any determination of non-innocence of passage by a transiting ship must be made on the basis of acts it commits while in the territorial sea. Thus cargo, means of propulsion, flag, origin, destination, or purpose of the voyage cannot be used as criteria in determining that the passage is not innocent. This point is of major national security significance, in particular because some 40 percent of U.S. Navy combatant ships use nuclear propulsion.

Article 20 requires that submarines and other underwater vehicles must navigate on the surface and show their flag while in the territorial sea, unless the coastal State decides to waive that requirement (as has been done in the NATO context).

Article 25(1) authorizes the coastal State to take appropriate measures in the territorial sea to prevent passage that is not innocent. Pursuant to Article 25(2), the coastal State also may take the measures necessary to prevent any breach of the conditions for admission of foreign ships to internal waters, as well as calls at a port facility outside internal waters.

Article 21(4) requires foreign ships exercising the right of innocent passage to comply with the laws and regulations enacted by the coastal State in conformity with the Convention, as well as all generally accepted international regulations relating to the prevention of collisions at sea. Subject to the provisions regarding ships entitled to sovereign immunity, this duty applies to all ships. However, the Convention provides no authority for a coastal State to condition the exercise of the right of innocent passage by any ships, including warships, on the giving of prior notification to or the receipt of prior permission from the coastal State.

Articles 21-24 add new and useful details regarding the rights and duties of coastal States and foreign ships. For purposes such as resource conservation, environmental protection, and navigational safety, a coastal State may establish certain restrictions upon the right of innocent passage of foreign vessels, as set out in article 21. This list is essentially new in the Convention and is exhaustive.

Such restrictions must be reasonable and necessary and not have the practical effect of denying or impairing the right of innocent passage. Article 24(1) provides that the restrictions must not discriminate in form or in fact against the ships of any State or those carrying cargoes to, from, or on behalf of any State. Pursuant to article 22, the coastal State may, where necessary having regard to the safety of navigation, require foreign ships exercising the right of innocent passage to utilize designated sea lanes and traffic separation schemes; tankers, nuclear powered vessels, and ships carrying dangerous or noxious substances may be required to utilize such designated sea lanes. Article 23 requires such ships, when exercising innocent passage, to carry

documents and observe special precautionary measures established for such ships by international agreements, including the International Convention for the Safety of Life at Sea, 1974, 32 UST 47, TIAS No. 9700 (SOLAS).

Article 21(2) imposes an additional limitation, that 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 established by the International Maritime Organization (IMO). This rule does not affect the right of the coastal State to establish and enforce its own requirements for port entry, or preclude cooperation between coastal States to enforce their respective port entry requirements. States may also agree to establish higher standards for their ships or for trade between them.

Article 24(2) requires the coastal State to give appropriate publicity to any dangers to navigation of which it has knowledge within its territorial sea.

Article 26 provides that no charge (such as a transit fee) may be levied upon foreign ships by reason only of their passage through the territorial sea. The only charges which may be levied are for specific services rendered to the ship, and any such charges must be levied without discrimination.

Temporary Suspension of Innocent Passage. Article 25(3) provides that:

> 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.

The prohibition against discrimination "in form or in fact" is designed to protect against acts which overtly discriminate in a manner that is prohibited by the article (discrimination "in form") and also against acts that, although not overtly discriminatory, have a discriminatory effect (discrimination "in fact"). "Weapons exercises" includes weapons testing.

Rules Applicable to Merchant Ships and Government Ships Operated for Commercial Purposes (Articles 27 and 28). Article 27, concerning criminal jurisdiction on board a foreign ship, and article 28, concerning civil jurisdiction in relation to foreign ships, are taken almost verbatim from articles 19 and 20 of the Territorial Sea Convention, respectively, but have been expanded to include the regime of the EEZ and the rules of Part XII on the protection and preservation of the marine environment introduced by the Convention.

Rules Applicable to Warships and Other Government Ships Operated for Non-commercial Purposes (Articles 29 to 32). Warships are defined in article 29 for the purposes of the Convention as a whole, including articles 95, 107, 110, 111 and 236. The Convention expands upon earlier definitions, no longer requiring that such a ship belong to the "naval" forces of a nation, under the command of an officer whose name appears in the "Navy list" and manned by a crew who are under regular "naval" discipline. Article 29 instead refers to "armed forces" to accommodate the integration of different branches of the armed forces in various countries, the operation of seagoing craft by some armies and air forces, and the existence of a coast guard as a separate unit of the armed forces of some nations, such as the United States.

Under article 30, the sole recourse available to a coastal State in the event of noncompliance by a foreign warship with that State's laws and regulations regarding innocent passage is to require the warship to leave the territorial sea immediately.

Article 31 provides that the flag State bears international responsibility for any loss or damage caused by its warships or other government ships operated for non-commercial purposes to a coastal State as a result of noncompliance with applicable law. This provision is consistent with the modern rules of State responsibility in cases of State immunity.

Article 32 provides, in effect, that the only rules in the Convention derogating from the immunities of warships and government ships operated for non-commercial purposes are those found in articles 17-26, 30 and 31.

Straits Used for International Navigation (Part III, Articles 34-39, 41-45)

The navigational provisions of the Convention concerning international straits are fundamental to U.S. national security interests. Merchant ships and cargoes, civil aircraft, naval ships and task forces, military aircraft, and submarines must be able to transit international straits freely in their normal mode as a matter of right, and not at the sufferance of the States bordering straits. The United States has consistently made clear throughout its history that it is not prepared to secure these rights through bilateral arrangements. The continuing U.S. position is that these rights must form an explicit part of the law of the sea. Part III of the Convention guarantees these rights.

With the expansion of the maximum permissible breadth of the territorial sea from 3 to 12 miles, it was necessary to develop stronger guarantees for navigation and overflight on, over, and under international straits. Such rules were critical to maintain the essential balance of interests between States bordering straits and other concerned States.

Part III applies to all straits used for international navigation, regardless of width, including their approaches, unless there is a high seas/EEZ route through the strait of similar convenience with respect to navigational and hydrographic characteristics. Part III applies three legal regimes to different kinds of straits used for international navigation.

Transit passage applies to straits connecting one part of the high seas/EEZ and another part of the high seas/EEZ (article 37), except as noted below. The great majority of strategically important straits, e.g., Gibraltar, Bonifacio, Bab el Mandeb, Hormuz,

Malacca, Singapore, Sunda, Lombok, and the Northeast, Northwest, and Windward Passages fall into this category. However, it is use for international navigation, not importance, that is the basic legal criterion, as described below.

Archipelagic sea lanes passage replaces transit passage as the relevant regime that applies to straits within archipelagic waters and the adjacent territorial sea, where archipelagic waters affecting such straits are established in accordance with Part IV of the Convention. This would be the situation, for example, in the Sunda and Lombok straits were Indonesia to designate archipelagic sea lanes. Transit passage applies to routes through islands groups to which the provisions regarding archipelagic waters do not apply.

Non-suspendable innocent passage applies to straits connecting a part of the high seas/EEZ and the territorial sea of a foreign State (article 45(1)(b)), and to straits connecting one part of the high seas/EEZ and another part of the high seas/EEZ where the strait is formed by an island of a State bordering the strait and its mainland, if there exists seaward of the island a route through the high seas/EEZ of similar convenience with regard to navigation and hydrographic characteristics (article 38(1)).

In addition, the Convention does not alter the legal regime in straits regulated by long-standing international conventions in force specifically relating to such straits. This provision refers to the Turkish Straits (the Bosporus and Dardanelles, connecting the Black Sea and the Aegean Sea via the Sea of Marmara) and the Strait of Magellan.

Transit Passage. Part III of the Convention protects long-standing navigation and overflight rights in international straits through the concept of transit passage. This is the regime governing the right of free navigation and overflight for ships and aircraft in transit in, over, and under straits used for international navigation. Recognition of such a right was a fundamental requirement for a successful Convention. With the extension by coastal States of their territorial seas to 12 miles, over 100 straits, which previously had high seas corridors, became overlapped by such territorial seas. Without provision for transit passage, navigation and overflight rights in those straits would have been compromised.

Read together, articles 38(2) and 39(1)(c) define transit passage as the exercise of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit in the normal modes of operation utilized by ships and aircraft for such passage. For example, submarines may transit submerged and military aircraft may overfly in combat formation and with normal equipment operation; surface warships may transit in a manner necessary for their security, including formation steaming and the launching and recovery of aircraft, where consistent with sound navigational practices. Article 38(3) provides that any activity which is not an exercise of the right of transit passage remains subject to the other applicable provisions of the Convention.

Under article 44, a State bordering an international strait may not suspend transit passage through international straits for any purpose, including military exercises. Further, article 42(2) requires that the laws and regulations of the State bordering a strait relating to transit passage not be applied so as to have the practical effect of denying, hampering or impairing the right of transit passage.

Innocent Passage in International Straits. Under article 45(1)(b), the regime of innocent passage, rather than transit passage, applies in straits used for international navigation that connect a part of the high seas or an EEZ with the territorial sea of a coastal State. There may be no suspension of innocent passage through such straits, and there is no right of overflight in such straits. These so-called "dead-end" straits include Head Harbour Passage leading through Canadian territorial sea to the United States' Passamaquoddy Bay.

Under articles 38(1) and 45(1)(a), the regime of non-suspendable innocent passage also applies in those straits formed by an island of a State bordering the strait and its mainland, where there exists seaward of the island a route through the high seas or EEZ of similar convenience with regard to navigational and hydrographical characteristics.

International Straits Not Completely Overlapped by Territorial Seas. The effect of article 36 is that ships and aircraft transiting through or above straits used for international navigation which are not completely overlapped by territorial seas and through which there is a high seas or EEZ corridor suitable for such navigation enjoy the high seas freedom of navigation and overflight while operating in and over such a corridor.

Moreover, if the high seas route is not of similar convenience with respect to navigational or hydrographical characteristics, the regime of transit passage applies within such straits. Thus, for example, a submarine may transit submerged through the territorial sea in a strait not completely overlapped by territorial seas where the territorial sea route is the only one deep enough for submerged transit.

"Straits Used for International Navigation." Under the Convention, the criteria in identifying an international strait is not the name, the size or length, the presence or absence of islands or multiple routes, the history or volume of traffic flowing through the strait, or its relative importance to international navigation. Rather, the decisive criterion is its geography: The fact that it is capable of being used for international navigation to or from the high seas or the EEZ.

The geographical definition contemplates a natural strait and not an artificially constructed canal. Thus, the transit passage regime does not apply to the Panama and Suez Canals.

Legal Status of Waters Forming International Straits. The regime of passage through international straits does not affect the legal status of these waters or the sovereignty or jurisdiction of the States bordering straits (article 34(1)). Article 34(2) requires States bordering straits to exercise their sovereignty and jurisdiction in accordance with Part III and other rules of international law. States bordering straits must not impede the right of transit passage.

Rights and Duties of States Bordering Straits. Articles 41-44 address the rights and duties of States bordering straits relating to a number of topics, including navigational safety and the prevention, reduction, and control of pollution from ships engaged in transit passage.

Pursuant to article 41, States bordering straits may designate sea lanes and prescribe traffic separation schemes to promote navigational safety. However, such sea lanes and separation schemes must conform to generally accepted international standards and be approved by the competent international organization (i.e., the IMO) before the sea lanes and traffic separation schemes may be put into effect. Ships in transit must respect properly designated sea lanes and traffic separation schemes. Such traffic separation schemes now exist in strategic straits such as Hormuz, Gibraltar and Malacca.

Article 42 specifically authorizes States bordering straits to adopt nondiscriminatory laws and regulations relating to transit passage through straits in respect of the safety of navigation and regulation of maritime traffic as provided in article 41; 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 (i.e., the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, with annexes (95th Cong., 1st Sess., Sen. Ex. E, 96th Cong., 1st Sess., Sen. Ex. C (MARPOL) and any applicable regional agreement); the prevention of fishing, including the stowage of fishing gear by fishing vessels; and 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. Due publicity must be given to these laws and regulations, and foreign ships exercising the right of transit passage are required by article 42(4) to comply with them (subject to the provisions of the Convention regarding ships entitled to sovereign immunity).

Article 43 encourages users and States bordering straits to cooperate by agreement in the establishment and maintenance of necessary navigational or safety aids in the strait, and in other improvements in aid of international navigation, and for the prevention, reduction and control of pollution from ships. The IMO has been active in promoting such cooperation.

Duties of Ships and Aircraft During Transit Passage (Article 39). Article 39(1) defines the common duties both ships and aircraft have while exercising the right of transit passage. They include the duty to proceed without delay through or over the strait, to refrain from the threat or use of force against States bordering straits, to 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), and to comply with other relevant provisions of Part III.

In addition, ships in transit passage are required by article 39(2) to comply with the International Regulations for Preventing Collisions at Sea, 1972, 28 UST 3459, TIAS No. 8587 (COLREGS), and other generally accepted international regulations, procedures and practices for safety at sea and for the prevention, reduction and control of pollution from ships (i.e., those adopted by the IMO).

Aircraft in transit passage are required to observe the ICAO Rules of the Air (Annex 2 to the International Convention on Civil Aviation (61 Stat. 1180, TIAS No. 1591, 15 UNTS 295 (Chicago Convention)), as they apply to civil aircraft. Article 39(3)(a) states that State aircraft will normally comply with such safety measures and operate at all times with due regard for the safety of navigation, as required by article 3(d) of the Chicago Convention. Aircraft in transit passage are also required to maintain a continuous listening watch on the appropriate frequency.

Archipelagic States (Part IV, Articles 46-54)

Part IV represents a successful resolution, following years of controversy, of the effort, led by Indonesia and the Philippines, to achieve a special regime for archipelagic States. The United States and other maritime States were willing to recognize the concept of archipelagic States only if its application were limited and precisely defined and did not impede rights of navigation and overflight. In effect, the concept of archipelagic States creates a geographic situation requiring the same kind of solution as transit passage of straits, i.e., the right of navigation and overflight on, over, and under the waters enclosed. Acceptance of this principle guarantees critical U.S. military and commercial navigation rights.

Article 46 describes an archipelagic State as one "constituted wholly by one or more archipelagos" and may include other islands. It defines an "archipelago" as a:

> group of islands, including parts of islands, inter-connecting 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.

Thus, the special regime of Part IV only applies to island States; a continental State may not claim archipelagic waters.

Archipelagic Baselines. A State may enclose archipelagic waters within archipelagic baselines that satisfy the criteria specified in article 47. Depending on how the archipelagic baseline system is established, the following 20 States could legitimately claim archipelagic waters: Antigua & Barbuda, The Bahamas, Cape Verde, Comoros, Fiji, Grenada, Indonesia, Jamaica, Kiribati (in part), Maldives, Marshall Islands (in part), Papua New Guinea, Philippines, Saint Vincent and the Grenadines, Sao Tome & Principe, Seychelles, Solomon Islands (five archipelagos), Tonga, Trinidad & Tobago, and Vanuatu.

The legal status of archipelagic waters, of the air space over archipelagic waters, and of their bed and subsoil is described in article 49. Article 51 addresses existing agreements, traditional fishing rights, and existing submarine cables. Archipelagic States measure the breadth of their various maritime zones from the archipelagic baselines. They may also draw closing lines delimiting internal waters of individual islands following the rules set out in articles 9-11.

Navigation and Overflight in Archipelagos. The right to navigate on, under, and over archipelagic waters by all kinds of ships and aircraft was a critical goal of the United States during the negotiations leading to the Convention. As with respect to the right of transit passage through international straits, the result of the negotiation fully protects this right.

Archipelagic sea lanes passage is very similar to the concept of transit passage. Article 53(3) defines archipelagic sea lanes passage as the exercise of the rights of navigation and overflight in the normal mode solely for the purpose of "continuous, expeditious and unobstructed transit" through archipelagic waters. For example, submarines may transit submerged and military aircraft may overfly in combat formation and with normal equipment operation; surface warships may transit in a manner necessary for their security, including formation steaming and the launching and recovery of aircraft, where consistent with sound navigational practices. The provisions regarding the width of archipelagic sea lanes were specifically designed to accommodate defensive formations and navigation practices normally used in open waters. Article 54, referring back to article 44, provides that the right of archipelagic sea lanes passage cannot be impeded or suspended by the archipelagic State for any reason.

All ships and aircraft, including warships and military aircraft, enjoy the right of archipelagic sea lanes passage while transiting through, under, or over the waters of archipelagos and adjacent territorial seas via archipelagic sea lanes. Articles 53(4) and 53(12) mean that archipelagic sea lanes passage must be respected in all routes normally used for international navigation and overflight, whether or not sea lanes are actually designated under the Convention.

Article 53 permits an archipelagic State to designate sea lanes and air routes for the exercise of archipelagic sea lanes passage. Such archipelagic sea lanes "shall include all normal passage routes . . . and all normal navigational channels . . . ." Each sea lane is defined by a continuous line from the point of entry into the archipelago to the point of exit. Ships and aircraft in designated archipelagic sea lanes passage are required to remain within 25 miles from either side of the axis line and must approach no closer to the coastline than 10 percent of the distance between the nearest islands.

Archipelagic sea lanes must conform to generally accepted international regulations, and must be referred to the "competent international organization," the IMO, with a view to their adoption, before implementation. Only after adoption by the IMO may the archipelagic State implement archipelagic sea lanes. No archipelagic State has yet submitted any proposal to the IMO.

The elements of the transit passage regime for international straits apply to archipelagic sea lanes passage. Article 54 applies, *mutatis mutandis*, the provisions of articles 39 (duties of ships and aircraft during their passage), 40 (research and survey activities), and 42 and 44 (laws, regulations, and duties of States bordering straits relating to passage).

Article 52 provides that innocent passage applies in archipelagic waters other than designated archipelagic sea lanes or the routes through which archipelagic sea lanes passage is guaranteed. All the normal rules of innocent passage apply, and there is no right of overflight or submerged passage. In island groups where a State either may not claim archipelagic waters under the Convention, or has not done so, the other rules of the Convention apply, including the rules regarding transit passage of straits.

The Contiguous Zone (Article 33)

In the contiguous zone, vessels and aircraft enjoy the same high seas freedoms of navigation and overflight as in the EEZ.

The Exclusive Economic Zone (Part V, Articles 55-60, 73)

From the perspective of the United States, Part V (articles 55-75) provides a regime for the EEZ that achieves a proper, long-term balance between coastal interests and maritime interests. These provisions enable the coastal State to explore, exploit, conserve and manage resources out to 200 miles from coastal baselines, while allowing other States to navigate, overfly and conduct related activities in the EEZ.

The United States is far and away the world's primary beneficiary in each respect. From a coastal perspective, the United States has an EEZ which is among the largest and richest of any in the world, with extensive living and non-living resources. From a maritime perspective, U.S. military and commercial ships and aircraft, as well as U.S. trade and communications, are guaranteed in the EEZs of other States essential navigational and related freedoms, from military exercises to laying cables and pipelines.

Article 56 defines the rights, jurisdiction, and duties of the coastal State in the EEZ. Paragraph 1 of this article distinguishes sovereign rights and jurisdiction, as follows:

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 sea-bed and of the sea-bed 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 the Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures (i.e., article 60);

(ii) marine scientific research (i.e., Part XIII);

(iii) the protection and preservation of the marine environment (i.e., Part XII, particularly article 220);

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

Article 56 enumerates the rights of the coastal State in the EEZ. Article 56(1)(a) establishes the sovereign rights of the coastal State. Article 56(1)(b) sets forth the nature and scope of coastal State jurisdiction with respect to specific matters. The terms "sovereign rights" and "jurisdiction" are used to denote functional rights over these matters and do not imply sovereignty. A claim of sovereignty in the EEZ would be contradicted by the language of articles 55 and 56 and precluded by article 58 and the provisions it incorporates by reference.

Pursuant to Article 58, in the EEZ all States enjoy the high seas freedoms of navigation and overflight, laying of submarine cables and pipelines, and other internationally lawful uses of the seas related to those freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and which are compatible with the other provisions of the Convention. Articles 88 to 115, which (apart from the fuller enumeration of freedoms in article 87) set forth the entire regime of the high seas on matters other than fisheries, apply to the EEZ in so far as they are not incompatible with Part V. These rights are the same as the rights recognized by international law for all States on the high seas.

Military activities, such as anchoring, launching and landing of aircraft, operating military devices, intelligence collection, exercises, operations and conducting military surveys are recognized historic high seas uses that are preserved by article 58. Under that article, all States have the right to conduct military activities within the EEZ, but may only do so consistently with the obligation to have due regard to coastal State resource and other rights, as well as the rights of other States as set forth in the Convention. It is the duty of the flag State, not the right of the coastal State, to enforce this "due regard" obligation.

The concept of "due regard" in the Convention balances the obligations of both the coastal State and other States within the EEZ. Article 56(2) provides that coastal States "shall have due regard to the rights and duties of other States" in the EEZ. Article 58(3) places similar requirements on other States in exercising their rights, and in performing their duties, in the EEZ. Although it is not specific, article 59 provides a basis for resolving disputes over any rights and duties not allocated by articles 56, 58 and other provisions of the Convention. 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 sets out the provisions permitting the coastal State to construct and to authorize and regulate the construction, operation, and use of artificial islands, installations and structures used for the purposes provided for in article 56(1) and other economic purposes, and other installations and structures that may interfere with the exercise of the coastal State's rights in its EEZ. This provision does not preclude the deployment of listening or other security-related devices. Article 60(3) requires the coastal State to give "due notice" of artificial islands, installations and structures and to remove those no longer in use in accordance with generally accepted international standards established by the IMO (e.g., IMO Assembly Resolution A.672(16)). Article 60(4)-(6) permits the coastal State to establish and give notice of reasonable safety zones around such structures not to exceed 500 meters in breadth except in accordance with generally accepted international standards or as recommended by the IMO, and requires ships to respect the zone and generally accepted international navigational standards.

Article 60(7) provides that artificial islands, installations and structures, and the safety zones around them, may not be located where they may cause interference with the use of recognized sea lanes essential to international navigation.

Of the remaining 15 articles on the EEZ (articles 61-75), 13 specifically relate to living resources jurisdiction in the zone, and are discussed below in the section on living marine resources; the other two are discussed below in the section on maritime boundary delimitation.

Consistent with article 73, the coastal State may, in the exercise of its sovereign rights over living resources in the EEZ, take such measures, including boarding, inspection, arrest, and judicial proceedings against foreign vessels as are necessary to ensure compliance with its rules and regulations adopted in conformity with the Convention. Arrested vessels and their crews are to be promptly released upon the posting of reasonable bond or other security. In cases of arrest or detention of foreign vessels, the coastal State is required to notify the flag State promptly, through appropriate channels, of the action taken and of any penalties imposed.

While no State has claimed an EEZ extending beyond 200 miles from coastal baselines, several of the States which have declared EEZs claim rights to regulate activities within the EEZ well beyond those authorized in the Convention. For example, Iran claims the right to prohibit all foreign military activities within its EEZ. The United States does not recognize such claims, which are not within the competence of coastal States under the Convention. Accession to the Convention will significantly enhance the ability of the United States to deal with such excessive claims, and to prevent their proliferation, on the basis of the balance of interests reflected in the Convention.

High Seas (Part VII, Articles 86-115)

Freedom to navigate and operate on, over, and under the high seas is a central requirement of the United States. The high seas provisions of the Convention reproduce the provisions of the 1958 Convention on the High Seas, 13 UST 2312, TIAS No. 5200 (High Seas Convention), with some very useful clarifications and updating that, for example, protect scientific research and facilitate enforcement against drug smuggling and unauthorized broadcasting. The relatively sparse anti-pollution provisions of the High Seas Convention have been replaced by the strong and elaborate environmental provisions discussed in the next section of this Commentary.

Pursuant to article 87, all ships and aircraft, including warships and military aircraft, enjoy freedom of movement and operation on and over the high seas. For warships and military aircraft, this includes task force maneuvering, flight operations, military exercises, surveillance, intelligence gathering activities, and ordnance testing and firing.

All of these activities must be conducted with due regard for the rights of other States and the safe conduct and operation of other ships and aircraft. The exercise of any of these freedoms is subject to the conditions that they be taken with "reasonable" regard, according to the High Seas Convention, or "due" regard, according to the LOS Convention, for the interests of other nations in light of all relevant circumstances. There is no substantive difference between the two terms. The "reasonable regard/due regard" standard requires any using State to be cognizant of the interests of others in using a high seas area, to balance those interests with its own, and to refrain from activities that unreasonably interfere with the exercise of other States' high seas freedoms in light of that balancing of interests. Articles 87, 89, and 90 prohibit any State's attempt to impose its sovereignty on the high seas; they are open to use by all States, whether coastal or land-locked.

Security Zones. Some coastal States have claimed the right to establish military security zones, beyond the territorial sea, in which they purport to regulate the activities of warships and military aircraft of other nations by such restrictions as prior notification or authorization for entry, limits on the number of foreign ships or aircraft present at any given time, prohibitions on various operational activities, or complete exclusion. There is no basis in the Convention, or other sources of international law, for coastal States to establish security zones in peacetime that would restrict the exercise of non-resource-related high seas freedoms beyond the territorial sea. Accordingly, the United States does not recognize the peacetime validity of any claimed security or military zone seaward of the territorial sea which purports to restrict or regulate the high seas freedoms of navigation and overflight, as well as other lawful uses of the sea.

Peaceful purposes (article 88) is discussed below in connection with article 301, on peaceful uses of the seas, in the section on general provisions.

Nationality, Status, and Duties of Ships (Articles 91-96). Articles 91-92 pertain to the nationality and status of ships. Article 91 requires, *inter alia*, that, for a State to grant its nationality to a ship, there must be a genuine link between the flag State and the ship. Article 92 provides that ships shall sail under the flag of one State only, save in certain exceptional cases, and be subject only to that State's jurisdiction while on the high seas. A ship that sails under two or more flags, using them according to convenience, may not claim any of the nationalities in question and may be treated as a stateless vessel.

Article 93 deals explicitly with ships flying the flag of the United Nations and its specialized agencies or the International Atomic Energy Agency. Article 94 sets out new, stricter duties of flag States with respect to their vessels, including such duties regarding the safety of navigation, that have been elaborated primarily under the auspices of the IMO.

While the general rule of exclusive flag State jurisdiction over vessels on the high seas has long standing in international law, the United States and other members of the international community have developed procedures for resolving problems that have arisen in certain contexts, including drug smuggling, illegal immigration and fishing, when States are unable or unwilling to exercise responsibility over vessels flying their flag. These procedures, several of which are contained in international agreements, typically seek to ensure that the flag State gives expeditious permission to other States for the purpose of boarding, inspection and, where appropriate, taking law enforcement action with respect to its vessels.

Sovereign Immunity (Articles 29-32, 95-96, 236). The Convention protects and strengthens the key principle of sovereign immunity for warships and military aircraft. Although not a new concept, sovereign immunity is a principle of vital importance to the United States. The Convention provides for a universally recognized formulation of this principle.

As discussed above, with respect to the territorial sea regime, articles 29 through 32 set forth the sovereign immunity rules applicable to warships and other government ships operated for non-commercial purposes.

Article 32 provides that, with such exceptions as are contained in subsection A and in articles 30 and 31 (discussed above), nothing in the Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

Regarding the definition of "warship," article 29 expands the traditional definition to include all ships belonging to the armed forces of a State bearing the external markings distinguishing the character and nationality of such ships, under the command of an officer duly commissioned by the government of that State and whose name appears in the appropriate service list of officers, and manned by a crew which is under regular armed forces discipline. A ship need not be armed to be regarded as a warship.

Concerning government ships operated for non-commercial purposes, these would include auxiliaries, which are vessels, other than warships, that are owned or operated by the armed forces. Like warships, they are immune from arrest and search, whether in port or at sea, and exempt from foreign taxes and enforcement of foreign laws and regulations; further, the flag State exercises exclusive control over all passengers and crew onboard.

Articles 95-96 address these issues with respect to the high seas regime. Article 95 provides that warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State. Article 96 provides that 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.

Finally, article 236 makes clear that the provisions of Part XII 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 must ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with the Convention.

Penal Jurisdiction in Matters of Collision or Any Other Incident of Navigation (Article 97). Article 97 restates existing international law relating to this subject.

Assistance to Persons, Ships, and Aircraft in Distress (Article 98). The law has long realized the importance of rendering assistance to persons in distress at sea. Article 98 replicates verbatim article 12 of the High Seas Convention. The duty to rescue also appears in the International Convention for the Unification of Certain Rules Relating to Salvage of Vessels at Sea, September 23, 1910, 37 Stat. 1658, TIAS No. 576, and the International Convention on Salvage, 1989, article 10, Sen. Treaty Doc. 102-12. Article 98 is implemented by 46 U.S.C. §§ 2303 & 2304.

Duty of Masters. In addition, the United States is a Party to the SOLAS Convention, which requires the master of every merchant ship and private vessel not only to speed to the assistance of persons in distress, but to broadcast warning messages with respect to dangerous conditions or hazards encountered at sea (Chapter V, Regulations 10 and 2).

Prohibition of the Transport Of Slaves (Article 99). Article 99 is identical to article 13 of the High Seas Convention and relates to the Convention to Suppress the Slave Trade and Slavery of September 25, 1926, 46 Stat. 2183, TS No. 778, 2 Bevans 607, 60 LNTS 253; the Protocol of December 7, 1953 Amending the Slavery Convention of September 25, 1926, 7 UST 479, TIAS No. 3532, 182 UNTS 51; and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of September 5, 1956, 18 UST 3201, TIAS No. 6418, 266 UNTS 3. This obligation is implemented in 18 U.S.C. §§ 1581-88 (1982), and gives effect to the policy enunciated by the Thirteenth Amendment to the Constitution of the United States.

The Slavery Convention, Amending Protocol, and Supplementary Convention do not authorize nonconsensual high seas boarding by foreign flag vessels. Nevertheless, article 22(1) of the High Seas Convention authorized nonconsensual boarding by a warship where there exists reasonable ground for suspecting that a vessel is engaged in the slave trade. Article 110(1)(b) of the LOS Convention reaffirms this approach.

Piracy (Articles 100-107). Despised by all nations since earliest recorded history, piracy continues to be a major problem in certain parts of the world. Articles 100-107 reaffirm the rights and obligations of all States to suppress piracy on the high seas.

The U.S. Constitution (article I, section 8) provides that:

> The Congress shall have Power . . . to define and punish piracies and felonies committed on the high seas, and offences against the Law of Nations.

Congress has exercised this power by enacting 18 U.S.C. § 1651, which provides that:

> Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

Congress has further exercised this power, including with respect to certain acts not regarded as piracy under international law, by enacting 18 U.S.C. §§ 1651-61 (piracy), 49 U.S.C. §§ 1472(i)-(n) (aircraft piracy), 33 U.S.C. §§ 381-84 (regulations for suppression piracy), and 18 U.S.C. §§ 1654 (privateering). These statutes provide a firm basis for implementing the relevant provisions of the Convention and other applicable international law.

Suppression of International Narcotics Traffic (Article 108). Article 108 of the Convention provides a valuable additional tool in support of the war on illicit drugs. This article requires all States to 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. This article also permits any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic to request the cooperation of other States to suppress such traffic.

This principle finds expression in other international law, including in the Single Convention on Narcotic Drugs, 1961, 18 UST 1407, TIAS No. 6298, 520 UNTS 204. Article 17 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Sen. Treaty Doc. 101-4, also mandates a consensual regime for the boarding of foreign flag vessels suspected of drug trafficking at sea. The United States has entered into a number of bilateral maritime counter-narcotics agreements, for example with the United Kingdom (33 UST 4224, TIAS No. 10296, 1285 UNTS 197), Belize (TIAS No. 11914), Panama (TIAS No. 11833) and Venezuela (TIAS No. 11827).

Implementing legislation in this field includes 49 U.S.C. §§ 781-789, 14 U.S.C. § 89, 22 U.S.C. §2291, and 46 U.S.C. App. § 1903 *et seq.*

Suppression of Unauthorized Broadcasting (Article 109). Article 109 is designed to aid in the suppression of "pirate broadcasting" and supports the Regulations annexed to the 1973 International Telecommunication Convention, 28 UST 2495, TIAS No. 8572; the 1982 International Telecommunication Convention, 99th Cong., 1st Sess. Treaty Doc. 99-6; and the 1979 Radio Regulations, 97th Cong., 1st Sess. Treaty Doc. 97-21. Unauthorized broadcasting from international waters is made a crime in the United States by 47 U.S.C. § 502 (1982).

Warship's Right of Approach And Visit (Article 110). Article 110 of the Convention reaffirms the right of warships, military aircraft or other duly authorized ships or aircraft to approach and visit other vessels to ensure that they are not engaged in various illegal activities. This is a right of great importance to the United States. Article 110 permits the right of visit to be exercised if there are reasonable grounds for suspecting that a foreign flag vessel is engaged in piracy, the slave trade, or unauthorized broadcasting; is without nationality; or is, in reality, of the same nationality as the warship. The maintenance and continued respect for these rights are essential to maritime counter-narcotics and alien smuggling interdiction operations.

Hot Pursuit (Article 111). Article 111 of the Convention provides a detailed elaboration of the concept of "hot pursuit," based on article 23 of the High Seas Convention. However, the Convention expands this concept to take into account the development of the EEZ and archipelagic waters, and provides further details with respect to aircraft engaged in hot pursuit. These modifications increase U.S. ability to pursue criminals, such as drug traffickers, as well as those who violate U.S. fisheries laws.

Cables and Pipelines (Articles 79, 87(1)(c), 112-115). The provisions on submarine cables and pipelines codify the right to lay and operate them. These provisions replicate their counterparts in article 4 of the Convention on the Continental Shelf, 15 UST 471, TIAS No. 5578, and articles 26-29 of the High Seas Convention, which themselves reflect the provisions of the 1884 Convention on the Protection of Submarine Cables, 24 Stat. 989, TS No. 380, as amended 25 Stat. 1414, TS Nos. 380-1 and 380-2, 380-3, 1 Bevans 89, 112, 114. The 1884 Submarine Cables Convention is implemented in 47 U.S.C. § 21 *et seq.* (1982).

Submarine cables include telegraph, telephone, and high-voltage power cables, which are essential to modern communications. In light of the extraordinary costs and increasing importance to the world economy of undersea telecommunications cables, particularly the new fiber-optic cables, it is significant that the Convention strengthens the protections for the owners and operators of these cables in the event of breakage.

Pipelines include those which deliver water, oil and natural gas, and other commodities. The Convention recognizes that pipelines may pose an environmental threat to the coastal State and, therefore, it increases the authority of the coastal State on its continental shelf over the location of pipelines and with respect to pollution therefrom.

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT (PART XII, ARTICLES 192-237)

The Law of the Sea Convention is the strongest comprehensive environmental treaty now in existence or likely to emerge for quite some time. Part XII establishes, for the first time, a comprehensive legal framework for the protection and preservation of the marine environment. By addressing all sources of marine pollution, such as pollution from vessels, sea-bed activities, ocean dumping, and land-based sources, Part XII promotes continuing improvement in the health of the world's oceans. It effectively and expressly balances economic and environmental interests in general, and the interests of coastal states in protecting their environment and natural resources with the rights and freedoms of navigation in particular. Compliance with Part XII's environmental obligations is subject to compulsory arbitration or adjudication.

Part XII thus creates a positive and unprecedented framework for marine environmental protection that will encourage all Parties to take their environmental obligations seriously and come together to address issues of common and pressing concern.

Definitions (Article 1)

Article 1 defines two terms used in Part XII: "pollution of the marine environment" and "dumping." The term "marine environment" is understood to include living resources, marine ecosystems, and the quality of seawater.

General Obligations (Articles 192-196)

Section 1 sets forth general provisions relating to the protection and preservation of the marine environment. Article 192 clearly establishes the legal duty of all States to protect and preserve the marine environment. The remaining provisions require States, *inter alia*, to adopt pollution control measures to ensure that activities under their control are conducted so as not to cause environmental damage to other States or result in the spread of pollution beyond their own offshore zones.

Global and Regional Cooperation (Articles 197-201)

Section 2 provides for global and regional cooperation for the protection and preservation of the marine environment. Cooperation includes, *inter alia*, development of rules, standards, and recommended practices and procedures for the protection and preservation of the marine environment (article 197), notification of imminent or actual damage to other States likely to be affected (article 198), development of contingency plans to respond to pollution incidents (article 199), promotion of research and exchange of information (article 200), and establishment of appropriate scientific criteria for rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment (article 201). (Article 242 adds provisions for international cooperation in research for environmental purposes.)

Technical Assistance (Articles 202-203)

Section 3 provides for the promotion of programs and appropriate scientific and technical assistance related to protection and preservation of the marine environment, especially to developing States.

Monitoring and Environmental Assessment (Articles 204-206)

Section 4 establishes rules for monitoring and environmental assessment. Article 204 sets forth obligations relating to monitoring the risks or effects of pollution on the marine environment, including the effects of activities which States permit or in which they engage.

Article 206 relates to the environmental assessment of certain activities on the marine environment. 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. (The requirements for assessment of potential environmental impacts of deep sea-bed mining activity are discussed below in connection with the deep sea-bed mining provisions of the Convention and the 1994 Agreement generally.)

International Rules and National Legislation to Prevent, Reduce, and Control Pollution of the Marine Environment (Articles 207-212)

Section 5 obligates States to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, sea-bed activities subject to national jurisdiction, deep sea-bed mining (activities in the Area), ocean dumping, vessels, and the atmosphere. As a general rule, these articles require States to adopt laws and regulations that are no less effective than international rules; to endeavor to harmonize their policies at the regional level; and to cooperate to develop international rules.

Although States are not legally bound by an international agreement to which they are not party, the requirement that their national laws at least have the same effect as, or be no less effective than, internationally agreed minimum standards of environmental protection is an important step forward in marine environmental protection.

Below is a discussion of the status of the development of international standards, national legislation, and other international activity relating to the sources of pollution identified in section 5, noting where the United States has already implemented these articles.

Pollution From Land-based Sources (Article 207). The Convention will be the first legally binding global agreement governing marine pollution from land-based sources. Article 207 requires that national laws for the prevention of marine pollution from land-based sources take into account internationally agreed standards. The Montreal Guidelines for the Protection of the Marine Environment Against Pollution from Land-Based Sources, adopted by the Governing Council of the United Nations Environment Program (Decision 13/18/II of the Governing Council of UNEP of May 24, 1985), are internationally agreed guidelines adopted with a view to assisting governments in developing international agreements and national legislation relating to land-based sources of pollution.

Since land-based sources of pollution continue to account for approximately 80 percent of all marine pollution, global discussions are ongoing in an effort to address more fully this source of pollution. In recognition of the importance of this problem and as an outgrowth of the 1992 United Nations Conference on Environment and Development, the United States in late 1995 will host an international conference on land-based sources of marine pollution. This conference is expected, *inter alia*, to result in a global action plan to address land-based sources of marine pollution.

On a regional basis, the United States is party to two regional agreements that contain general provisions on land-based sources of marine pollution: the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (the SPREP Convention), Sen. Treaty Doc. 101-21, and the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (the Cartagena Convention), TIAS No. 11085. Under the auspices of the Cartagena Convention and the United Nations Regional Seas Program, the United States and other Caribbean States are presently considering the need for, and elements of, a possible protocol to the Cartagena Convention on land-based sources of marine pollution. In addition, the Protocol on Environmental Protection to the Antarctic Treaty, Sen. Treaty Doc. 102-22, to which the United States is a signatory, and the Arctic Environmental Protection Strategy address land-based sources of marine pollution.

The United States already has national legislation addressing land-based sources of marine pollution; this legislation takes into account the recommendations of the Montreal Guidelines described above. U.S. laws include the Clean Water Act, 33 U.S.C. §§ 1251-1387, which specifically addresses marine water quality, and other statutes (such as the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601-9675, and the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136-136y) which regulate the release of pollutants and other materials into the environment. See also the Refuse Act, 33 U.S.C. § 407 *et seq.*, and the Coastal Zone Management Act of 1972, 16 U.S.C. § 1451 *et seq.*

Pollution From Sea-bed Activities Subject to National Jurisdiction (Article 208). The Convention will be the first legally binding global agreement governing pollution from sea-bed activities. Article 208 requires that coastal State laws governing pollution from sea-bed activities be no less effective than international rules and standards. Although there are many

potential sea-bed activities, including the mining of coral, placers, and sand, the most common sea-bed activity is the exploration and exploitation of oil and gas. Internationally, the need for regulation of this industry is reviewed periodically by the IMO. Regionally, article 8 of the SPREP Convention and article 8 of the Cartagena Convention address pollution from sea-bed activities.

The United States has domestic legislation that addresses pollution from sea-bed activities of persons subject to U.S. jurisdiction, both in areas subject to U.S. jurisdiction and beyond. These include the Outer Continental Shelf Lands Act, 33 U.S.C. §§ 1331-1356 and the Deep Seabed Hard Minerals Resources Act ("DSHMRA"), 30 U.S.C. §§ 1401 *et seq.*

Pollution From Deep Sea-bed Mining (Activities in the Area) (Article 209). International rules and national legislation relating to pollution from deep sea-bed mining have yet to be developed. As discussed in the section of this Commentary on deep sea-bed mining, the environmental protection provisions of the Convention relating to activities in the Area are quite strong and comprehensive. The 1994 Agreement further strengthens these provisions by requiring, *inter alia*, that all applications for approval of plans of work be accompanied by an assessment of the potential environmental impacts of the proposed activities and that the International Sea-bed Authority adopt rules, regulations and procedures on marine environmental protection as part of its early functions prior to the approval of the first plan of work for exploitation (Annex, section 1(5)(g), (7)). The DSHMRA addresses pollution from sea-bed activities of persons subject to U.S. jurisdiction in areas beyond national jurisdiction, including provision for an environmental impact statement, monitoring, NPDES permits, and emergency suspension of activities.

Pollution by Dumping (Article 210). Article 210 requires that national laws regarding pollution from dumping be no less effective than the global rules and standards. The global regime addressing pollution of the marine environment by dumping is long-established. The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Convention), 26 UST 2403, TIAS No. 8165, 1046 UNTS 120, governs the ocean dumping of all wastes and other matter.

Both the SPREP Convention (article 10) and the Cartagena Convention (article 6) contain general provisions addressing ocean dumping on a regional basis. In addition, a Protocol to the SPREP Convention contains provisions that parallel those of the London Convention as it existed in 1986.

Domestically, dumping is controlled by the Marine Protection, Research, and Sanctuaries Act (Ocean Dumping Act), 33 U.S.C. §§ 1401-1445.

Pollution From Vessels (Article 211). The Convention's provisions relating to pollution from vessels are developed in considerable detail. They are a significant part of the overall balance between coastal and maritime interests the Convention is designed to maintain over time.

Paragraph 1 requires States to establish international rules and standards to prevent, reduce and control vessel source pollution and the adoption of routeing systems to minimize the threat of accidents which might cause pollution of the marine environment. Such rules and standards are to be developed through the competent international organization, which is recognized to be the IMO. The IMO has developed several conventions that, directly or indirectly, address vessel source pollution. One of the most important of these is the MARPOL Convention, which contains general provisions on pollution from vessels, supplemented by five Annexes pertaining to vessel discharges of oil (Annex I), noxious liquid substances in bulk (Annex II), harmful substances carried by sea in packaged forms, or in freight containers, portable tankers or road and rail tank wagons (Annex III), sewage (Annex IV), and garbage (Annex V). Other IMO conventions include SOLAS; the 1978 International Convention on Standards of Training, Certification and Watchkeeping, 96th Cong., 1st Sess. Sen. Ex. EE (STCW); and the International Convention on Oil Pollution Preparedness, Response, and Cooperation, Sen. Treaty Doc. 102-11. At present, the United States is party to all of the foregoing except MARPOL Annex IV.

Regionally, both the SPREP Convention (article 6) and the Cartagena Convention (article 5) contain broad obligations concerning pollution from vessels.

Paragraph 2 obligates States to adopt measures relating to vessels flying their flag or of their registry. Such laws and regulations must 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 (e.g., MARPOL).

Paragraph 3 recognizes the authority of port States to establish their own requirements relating to vessel source pollution as a condition of entry of foreign vessels into their ports or internal waters or for a call at their offshore terminals. Although port state authority has long been exercised by many countries as a means of enforcing safety and environmental measures, including the United States pursuant to the Ports and Waterways Safety Act, 33 U.S.C. §§ 1223 & 1228, its prominent recognition in the Convention and the provisions for cooperation among port States are important steps forward in marine environmental protection.

Paragraph 4 recognizes the authority of coastal States, in the exercise of their sovereignty within their territorial sea, to establish requirements relating to pollution from foreign vessels in their territorial sea, including vessels exercising the right of innocent passage. This authority is balanced by the proviso in paragraph 4 that such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels. However, passage is not innocent if the vessel engages in "any act of wilful and serious pollution contrary to this Convention" (article 19(2)(h)).

Paragraph 5 recognizes the authority of coastal States, for the purpose of enforcement as provided for in section 6, to establish requirements relating to pollution from foreign vessels in their EEZs. Unlike requirements in the territorial sea, coastal State requirements regarding pollution from foreign ships in the EEZ must conform to and give effect to generally accepted international rules and standards established through the competent international organization (i.e., the IMO) or a general diplomatic conference.

Paragraph 6 sets forth circumstances under which coastal States may establish special anti-pollution measures for foreign ships in particular areas of their respective EEZs. Such measures, among other things, require IMO approval. This paragraph strikes an important balance between the need for universal respect for necessary supplemental anti-pollution measures in particular coastal areas and the need to protect freedom of navigation from unilateral coastal State restrictions.

Domestically, vessel source pollution is governed primarily by the Act to Prevent Pollution from Ships, 33 U.S.C. §§ 1901-1912, the Clean Water Act, 33 U.S.C. §§ 1251- 1387, the Ports and Waterways Safety Act, 33 U.S.C. § 1221 *et seq.*, the Marine Protection, Research and Sanctuaries Act (Ocean Dumping Act), 33 U.S.C. § 1401 *et seq.*, the Oil Pollution Act of 1990, 33 U.S.C. § 2761 *et seq.*, the Refuse Act, 33 U.S.C. § 407 *et seq.*, and the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*

Pollution From or Through the Atmosphere (Article 212). There is at present no global agreement directly governing marine pollution from or through the atmosphere. The parties to MARPOL are currently negotiating a possible new Annex VI that would address air pollution from ships. Article 9 of the SPREP and Cartagena Conventions have broad obligations relating to pollution to those regions from discharges into the atmosphere. Domestically, such provisions are addressed through the Clean Air Act, 42 U.S.C. § 7401 *et seq.*

Enforcement (Articles 213-222)

Section 6 sets forth the rights and obligations of States to ensure compliance with and to enforce measures adopted in accordance with articles 207 through 212. In this respect, the Convention goes beyond and strengthens existing international agreements, many of which do not have express enforcement clauses.

Pursuant to article 229, nothing in the Convention affects the institution of civil (as opposed to punitive) proceedings in respect of any claim for loss or damage resulting from pollution of the marine environment.

There are express enforcement provisions relating to pollution from land-based sources (article 213), seabed activities (article 214), activities in the Area (article 215), dumping (article 216), vessels (articles 217-220), maritime casualties (article 221), and pollution from or through the atmosphere (article 222). Although all of these articles contain specific obligations, the provisions regarding the enforcement for vessel source pollution are set out in detail.

Article 217 places a duty on flag States to ensure that vessels flying their flag or of their registry comply with the measures adopted in accordance with the Convention. Among other things, flag States must ensure that vessels flying their flag or of their registry are in compliance with international rules and standards, carry requisite certificates, and are periodically inspected. If a vessel commits a violation of applicable rules and standards, the flag State must provide for immediate investigation and, where appropriate, institute proceedings irrespective of where the violation or pollution has occurred. Penalties must be adequate in severity to discourage violations wherever they occur. Article 217 is consistent with article 4 of MARPOL, chapter I of the Annex to SOLAS, and article VI of STCW.

Section 6 also sets forth the rights of port States and coastal States to take enforcement action against foreign flag vessels that do not comply with measures adopted in accordance with the Convention.

Article 218 recognizes the authority of the port State to take enforcement action in respect of a discharge from a vessel on the high seas in violation of applicable international rules and standards. (Discharges in the territorial sea or EEZ of the port State are addressed in article 220(1).) The port State may also take enforcement action in respect of a discharge violation in the internal waters, territorial sea or EEZ of another State if requested by that State, the flag State, or a State damaged or threatened by the discharge, or if the violation has caused or is likely to cause pollution to the internal waters, territorial sea, or EEZ of the port State.

Article 219 recognizes the authority of the port State to prevent a vessel from sailing when it ascertains that the vessel is in violation of applicable international rules and standards relating to seaworthiness and thereby threatens damage to the marine environment.

Article 220 provides an overall enforcement scheme for vessel source pollution based on various factors, including the location of the vessel, the location of the act of pollution, and the severity of the pollution. Article 220 affects only vessel discharges and does not apply to enforcement with respect to other types of pollution, such as by dumping.

Article 220 recognizes the authority of the coastal State to take enforcement action with respect to a foreign flag vessel in its EEZ or territorial sea, whether or not that vessel enters a port of the coastal State. However, such enforcement authority is not unfettered. Article 220 balances the interests of coastal States in taking enforcement action with rights and freedoms of navigation of flag States. It recognizes express safeguards applicable to enforcement action against foreign flag vessels (see section 7).

Article 220(1) recognizes the authority of a coastal State to take enforcement action against a vessel voluntarily within its port or off-shore terminal when a violation involving that vessel has occurred within the territorial sea or the EEZ of the coastal State.

Under Article 220(2), where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated laws and regulations of the coastal State adopted in accordance with the Convention, the coastal State may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including the detention of the vessel.

Under Article 220(3), where there are clear grounds for believing that a vessel navigating in the EEZ or the territorial sea of a State has, in the EEZ, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels, or laws and regulations of the coastal State conforming and giving effect to such rules and standards, the coastal State may require the vessel to provide 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.

Article 220(4) requires flag States to adopt laws and regulations and take other measures so that their vessels comply with requests for information by coastal States under paragraph 3.

Where a violation referred to in article 220(3) results in a substantial discharge causing or threatening significant pollution of the marine environment, article 220(5) authorizes the coastal State to 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.

Where a violation referred to in article 220(3) results in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, article 220(6) authorizes the coastal State, under certain circumstances, to institute proceedings, including detention of the vessel.

Pursuant to article 233, Sections 5 and 6 do not affect the legal regime of straits. Article 233 applies to enforcement of laws and regulations applicable to transit passage under article 42 and, by extension, to archipelagic sea lanes passage under article 54.

Safeguards (Articles 223-233)

Section 7 establishes several safeguards concerning enforcement authority. These include an obligation to facilitate proceedings involving foreign witnesses and the admission of evidence submitted by another State (article 223), a specification as to what officials and vessels may exercise enforcement authority against foreign vessels (article 224), a duty to avoid adverse consequences in the exercise of enforcement powers (article 225), safeguards concerning delay and physical inspection of foreign vessels (article 226), and a duty of non-discrimination against foreign vessels (article 227).

Under article 226, States may not delay a foreign vessel "longer than is essential" for the purposes of the investigations provided for in articles 216, 218, and 220. Moreover, any physical inspection of a foreign vessel is limited to an examination of such certificates, records or other documents as the vessel is required to carry. Any further physical examination 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. While the Convention imposes different procedural restrictions on physical inspections than U.S. law, it is anticipated that one or more of the exceptions for allowing further physical examination will be met in cases where there are "clear grounds" to believe a violation has occurred.

Article 228, which applies only to vessel source pollution, sets forth circumstances under which proceedings shall be suspended and restrictions on institution of proceedings. For example, consistent with the notion in Section 6 that the flag State is primarily responsible for ensuring compliance with the Convention of vessels flying its flag or of its registry, article 228(1) requires the suspension of enforcement proceedings against foreign vessels if the flag State institutes its own proceedings to impose penalties within six months of the date on which proceedings were first initiated. Suspension would not be required if the flag State fails to initiate proceedings within six months, if the 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 suspended proceeding will be terminated when the flag State has brought its proceedings to a conclusion. Article 228(2) imposes a limitation of three years in which to commence proceedings against foreign vessels.

Article 230, which applies only to vessel source pollution, provides that only monetary penalties may be imposed with respect to violations committed by foreign vessels beyond the territorial sea. With respect to violations committed by foreign vessels in the territorial sea, non-monetary penalties (i.e., incarceration) may be applied as well, but only if the vessel has committed a willful and serious act of pollution. The requirement that the act be "willful" would not constrain penalties for gross negligence. Article 230 applies only to natural persons aboard the vessel at the time of the discharge.

Article 231 provides for notification to the flag State and other States concerned of any measure taken against the foreign vessel. Under article 232, the enforcing State will be liable for damage or loss caused by measures taken that are unlawful or exceed those reasonably required in light of available information.

The extent to which, if at all, Sections 6 and 7 (on enforcement and safeguards, respectively) will enhance and/or constrain U.S. enforcement authorities is the subject of ongoing analysis.

Ice-Covered Areas (Article 234)

Section 8 authorizes coastal States to adopt and enforce laws and regulations relating to marine pollution from vessels in ice-covered areas within the limits of the EEZ, 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.

Pursuant to this article, a State may enact and enforce non-discriminatory laws and regulations to protect such ice-covered areas that are within 200 miles of its baselines established in accordance with the Convention. Such laws and regulations must have due regard to navigation and the protection and preservation of the marine environment, based on the best available scientific evidence, and must be otherwise consistent with other relevant provisions of the Convention and international law, including the exemption for vessels entitled to sovereign immunity under article 236.

The purpose of article 234, which was negotiated directly among the key states concerned (Canada, the United States and the Soviet Union), is to provide the basis for implementing the provisions applicable to commercial and private vessels found in the 1970 Canadian Arctic Waters Pollution Prevention Act to the extent consistent with that article and other relevant provisions of the Convention, while protecting fundamental U.S. security interests in the exercise of navigational rights and freedom throughout the Arctic.

Responsibility and Liability (Article 235)

Section 9 provides that States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment and that they shall be liable in accordance with international law. It further provides that States shall ensure recourse in their legal systems for relief from damage caused by pollution of the marine environment. Finally, it obligates States to cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability.

Sovereign Immunity (Article 236)

Section 10 provides that the provisions of the Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, or other vessels and aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, the second sentence of article 236 imposes on flag States the duty to ensure, by adopting appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned and operated by it, that such vessels and aircraft act in a manner consistent, so far as is reasonable and practicable, with the Convention.

This article acknowledges that military vessels and aircraft are unique platforms not always adaptable to conventional environmental technologies and equipment because of weight and space limitations, harsh operating conditions, the requirements of long-term sustainability, or other security considerations. In addition, security needs may limit compliance with disclosure requirements.

Obligations Under Other Conventions on the Protection And Preservation of the Marine Environment (Article 237)

Section 11 (article 237(1)) provides that the provisions in Part XII are without prejudice to the specific obligations assumed by States under agreements previously concluded which relate to the protection and preservation of the marine environment and to agreement which may be concluded in furtherance of the general principles set forth in the Convention. Article 237(2) provides that specific obligations assumed by States under other agreements should be carried out in a manner consistent with the general principles and objectives of this Convention. The United States does not anticipate any change in its implementation of other agreements, since it currently implements such agreements consistent with the principles and objectives of the Convention.

LIVING MARINE RESOURCES (Articles 2, 56, 61-73, 77(4), 116-120)

Approximately 90 percent of living marine resources are harvested within 200 miles of the coast. By authorizing the establishment of EEZs, and by providing for the sovereign rights and management authority of coastal States over living resources within their EEZs, the Convention has brought most living marine resources under the jurisdiction of coastal States.

The Convention recognizes the need for consistent management of ecosystems and fish stocks throughout their migratory range, and sound management on the basis of biological characteristics. It imposes on the coastal State a duty to conserve the living marine resources of its EEZ.

While the Convention preserves the freedom to fish on the high seas beyond the EEZ, it makes that freedom subject to certain obligations, particularly the duty to cooperate in the conservation and management of high seas living resources. Failure to respect these obligations beyond the EEZ is subject to compulsory arbitration or adjudication. Tribunals are empowered to prescribe provisional measures to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, including its living resources, pending the final decision.

The Convention's provisions relating to the conservation and management of living marine resources are consistent with U.S. law, policy and practice, and have provided the foundation for the international agreements governing this subject. These provisions are more critical today to U.S. living marine resource interests than they were in 1982 because of the dramatic overfishing that has occurred world-wide in the past decade.

Territorial Sea and EEZ

Basic Rights and Obligations. The Convention gives the coastal State broad authority to conserve and manage living resources within its territorial sea and EEZ. Article 2 of the Convention provides that the sovereignty of the coastal State extends throughout the territorial sea. As part of the exercise of such sovereignty, the coastal State has the exclusive right to conserve and manage resources, including living resources, within the territorial sea, which may extend up to 12 miles from coastal baselines.

The Convention also provides that the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing living resources within its EEZ, including the right to utilize fully the total allowable catch of all such resources (articles 56, 61, 62). With these rights come general responsibilities for the coastal State, including the duty:

- To determine the allowable catch of living resources in its EEZ (article 61(1));
- To ensure that such resources are not endangered by over-exploitation (article 61(2));
- To take into account effects of its management measures on non-target species with a view to maintaining or restoring such species above levels at which their reproduction may become seriously threatened (article 61(3));
- To promote the objective of optimum utilization of such resources (article 62(1)); and
- To determine its capacity to harvest such resources and to give other States access to any surplus under reasonable conditions (article 62(2)).

The coastal State has significant flexibility in defining optimum utilization and in fixing allowable catch, in determining its harvesting capacity, and therefore in determining what, if any, surplus may exist. The coastal State must, taking into account the best scientific evidence available to it, ensure that over-exploitation of stocks within its EEZ does not jeopardize the maintenance of the stocks overall and must maintain stocks of harvested species at levels which can produce maximum sustainable yields, as qualified by economic, environmental and other factors.

Similarly, the Convention gives coastal States wide discretion in choosing which other States will be allocated a share of any surplus. In making this choice, the coastal State must take into account "all relevant factors." Foreign fishing, to the extent authorized, may be conditioned upon observance of a wide variety of coastal State regulations, including area, season, vessel and gear restrictions, research, reporting and observer requirements, and compensation in the form of fees, financing, equipment, training and technology transfer.

U.S. law, primarily the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. § 1801 *et seq.*) (MFCMA), fully enables the United States to exercise its rights and implement its obligations with respect to the provisions of the Convention discussed above.

The MFCMA provides the United States with exclusive fishery management authority over all fishery resources up to the 200-mile limit of the U.S. EEZ (16 U.S.C. § 1811(a)). The MFCMA requires conservation of such resources in a manner consistent with article 61 (16 U.S.C. § 1851) and provides the legislative basis on which the United States determines the allowable catch of the living resources in its EEZ, as required by article 61 (16 U.S.C. § 1852). The process for making that determination fully comports with the principles of conservation and optimum utilization contained in articles 61 and 62. Fishery management plans developed pursuant to the MFCMA must prohibit overfishing and must attempt to achieve "optimum yield" (16 U.S.C. § 1851(a)(l)).

While the MFCMA does not separately address the issue of associated or dependent species, it gives sufficiently broad authority to regional fishery management councils to permit them to protect non-target species to the extent required by article 61(3), and arguably requires the councils to do so by providing that, to the extent practicable, interrelated species shall be managed as a "unit" (16 U.S.C. § 1851(a)(3)). The Endangered Species Act (16 U.S.C. § 1651 *et seq.*) would independently protect those non-target species that were endangered or threatened throughout a significant portion of their range.

The MFCMA authorizes the allocation of any surplus to foreign States and establishes terms and conditions for any foreign fishing in the U.S. EEZ, thus providing the basis on which to fulfill any such obligations under article 62 (16 U.S.C. § 1821 generally and § 1824(b)(7)). In fact, because the harvesting capacity of the U.S. domestic fishing industry has in recent years been estimated to equal the total allowable catch of all relevant species subject to U.S. management authority, the United States has had no surplus to allocate to potentially interested States.

To have an opportunity to receive an allocation, a foreign nation must have in force a "governing international fishery agreement" (GIFA) with the United States (16 U.S.C. § 1821). This requirement is fully consistent with article 62. Presently, the United States has GIFAs in force with 5 nations, although, as noted above, there has been no surplus to allocate under such GIFAs in recent years.

In the event that a surplus of one or more species becomes available in the future, the MFCMA lists a variety of factors to be considered in determining the allocation of such surplus among foreign States (16 U.S.C. § 1821(e)). The Convention also lists many of these same factors, either as relevant considerations or as permissible terms and conditions for foreign fishing (article 62(3) & (4)). The Convention's list is not exhaustive and does not restrict utilizing any of the factors set forth in the MFCMA.

Although articles 69 and 70 require coastal States to give some special consideration to land-locked and geographically disadvantaged States in the same subregion or region in allocating any surplus, the Convention does not provide clear standards by which to determine whether any such States exist in the U.S. subregion or region. In any event, the language of these articles and that of article 62 gives the

coastal State wide discretion in making such allocations and cannot be read to compel the making of an allocation to any particular State.

The MFCMA imposes other conditions on foreign fishing, including the payment of permit fees and compliance with fishery regulations and enforcement provisions (16 U.S.C. § 1821). The Convention permits the coastal State to impose all these conditions and requires nationals of other States fishing in an EEZ to observe regulations of the coastal State (article 62(4)).

In sum, the MFCMA provides a fully sufficient basis on which the United States could exercise its rights and implement its obligations with respect to the conservation and management of living resources within its territorial sea and EEZ.

Particular Categories of Species. Articles 63 through 68 of the Convention set forth additional provisions relating to particular categories of living resources that do not remain solely within areas under the fishery management authority of a single coastal State. U.S. law, and the international agreements to which the United States is party, as well as the 1992 United Nations moratorium on high seas driftnet fishing, are fully consistent with these provisions.

Article 63(1) requires coastal States within whose EEZs the same stock or stocks of associated species occur to seek to agree on the measures necessary to coordinate and ensure the conservation and development of such stocks. The MFCMA calls for the Secretary of State to negotiate such agreements (16 U.S.C. § 1822). One example of such an agreement is the U.S.-Canada Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, March 2, 1953, 5 UST 5, TIAS No. 2900, 222 UNTS 77.

Articles 63(2) and 64, respectively, address "straddling" stocks and highly migratory species. These provisions are reviewed below in detail.

Article 65 of the Convention recognizes the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate exploitation of marine mammals more strictly than is required in the case of other living resources. Article 65 also requires States to cooperate with a view to conserving marine mammals and, in the case of cetaceans, to work in particular through appropriate international organizations. Article 120 makes article 65 applicable to the high seas as well.

These provisions lent direct support to the efforts of the United States and other conservation-minded States within the International Whaling Commission to establish a moratorium on commercial whaling. Prior to the adoption of these provisions in the text, whaling States argued that the Convention should require that protective measures for marine mammals may do no more than ensure the maintenance of maximum sustainable yield. These arguments were definitively rejected in the Third United Nations Conference on the Law of the Sea, paving the way for the commercial whaling moratorium and other measures that strictly protect marine mammals, including the Southern Ocean Whale Sanctuary adopted in 1994 by the International Whaling Commission.

U.S. law, including the Marine Mammal Protection Act of 1972, as amended, and the Whaling Convention Act of 1949, as amended (16 U.S.C. § 916 *et seq.*), strictly limits the exploitation of marine mammals within the U.S. territorial sea and EEZ and by U.S. vessels and persons subject to U.S. jurisdiction elsewhere.

Article 66 sets forth provisions relating to anadromous stocks (fish that migrate from salt water to spawn in fresh water) such as salmon, which recognize their special characteristics and reflect a major U.S. policy accomplishment. Article 66(1) provides that "States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks."

Article 66(2) authorizes the State of origin, after consulting with other relevant States, to set total allowable catches for anadromous stocks originating in its rivers.

Article 66(3)(a) prohibits fishing for anadromous stocks on the high seas beyond the EEZ except when such a prohibition would "result in economic dislocation" for a State other than a State of origin. On its face, this provision makes unlawful any new high seas salmon fisheries or the expansion of current ones. In fact, at the time the Convention was concluded, only Japan maintained a high seas salmon fishery. Since the entry into force of the 1992 Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, on February 16, 1993, that fishery has been prohibited as well. The 1982 Convention for the Conservation of Salmon in the North Atlantic Ocean, TIAS No. 10789, also prohibits high seas fishing for salmon in that region. Thus, the combined effect of the LOS Convention and these two treaties precludes any fishery for U.S.-origin salmon, or any other salmon, on the high seas, a major benefit to the United States.

U.S. law implementing the North Pacific and North Atlantic salmon treaties prohibits persons or vessels subject to the jurisdiction of the United States from fishing for salmon on the high seas of those regions (16 U.S.C. §§ 3606, 5009).

Article 66 does not supersede the sovereign rights of the coastal State over anadromous stocks exercised in the territorial sea and EEZ pursuant to articles 2 and 56(1)(a), respectively, or those coastal State rights recognized under articles 61 and 62.

Anadromous stocks that originate in one State and migrate through the internal waters, territorial sea or EEZ of another State are subject to interception by the latter. In such cases, article 66(4) of the Convention requires the States concerned to cooperate in matters of conservation and management. The 1985 Treaty Between the Government of the United States and the Government of Canada Concerning Pacific Salmon, TIAS No. 11091, currently the subject of additional negotiations, established the Pacific Salmon Commission to effect such cooperation on salmon in that region. It should be noted, however, that the so-called equity principle of the Pacific Salmon Treaty does not derive from article 66, but is specific to that Treaty.

Under article 67, catadromous stocks (fish that migrate from fresh water to spawn in salt water) are the special responsibility of those States where they spend the greater part of their life cycle, and may not be harvested on the high seas beyond the EEZ. The United States exercises exclusive fishery management authority over catadromous stocks within the U.S. EEZ under the general provisions of the MFCMA discussed above.

Enforcement. The Convention authorizes the coastal State to take a broad range of measures to enforce its fishery laws, including boardings and inspections, requirements for observer coverage and vessel position reports, and arrests and fines (articles 62(4) & 73). The Convention requires that vessels arrested in the EEZ and their crews must be promptly released upon posting of a bond or other security. This rule is consistent with U.S. law. The rare foreign fisherman charged with a criminal violation of fisheries law may post bail; the MFCMA also provides for the release of a seized vessel upon the posting of a satisfactory bond (16 U.S.C. § 1860(d)).

Under the Convention, penalties for violations of fisheries laws in the EEZ may not include imprisonment, unless the States concerned agree to the contrary, or other form of corporal punishment (article 73). The MFCMA provides for criminal fines of up to $200,000 for fishing violations committed by foreign fishermen. The MFCMA also provides for imprisonment for such acts as forcible assault, resisting or interfering with arrest, and obstructing a vessel boarding by an enforcement officer (16 U.S.C. § 1859(b)). The Convention does not preclude imprisonment of those who assault officers, resist arrest, or violate other non-fishery laws.

The provisions of the Convention prohibiting imprisonment or corporal punishment for fishing violations responded to the severe treatment meted out to foreign fishermen in some places. Although the Convention limits the ability of the United States to impose prison sentences on foreign fishermen who violate U.S. fishery laws, the Convention promotes a major U.S. objective in protecting U.S. fishermen seized by other States from the imposition of prison sentences. On balance, these provisions of the Convention serve U.S. interests overall, given that many U.S. fishermen are actively engaged in fishing within foreign EEZs, while no foreign fishing is authorized within the U.S. EEZ at present.

Continental Shelf

Under articles 68 and 77 of the Convention, sedentary species, such as coral, are not subject to the Convention's provisions relating to the EEZ, but are dealt with in the articles relating to the continental shelf. Under article 77, the coastal State has sovereign rights for the purpose of exploring and exploiting the sedentary species of the continental shelf, unqualified by the duties specifically associated with the conservation and management of living resources in the EEZ. This result is consistent with article 2(4) of the Continental Shelf Convention.

The definition of sedentary species remains the same as that in the Continental Shelf Convention:

> organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

Neither convention provides examples of sedentary species subject to coastal State jurisdiction. However, the MFCMA specifies a number of varieties of coral, crab, mollusks and sponges as included within the sedentary species subject to U.S. continental shelf jurisdiction, and permits identification of other species when published in the Federal Register (16 U.S.C. § 1802(4)).

High Seas

International law has long recognized the right of all States for their nationals to engage in fishing on the high seas (High Seas Convention, article 2(2)). The freedom of high seas fishing has never been an unfettered right, however. The High Seas Convention, for example, required this freedom to be exercised by all States with "reasonable regard to the interests of other States in their exercise of the freedom of the high seas."

By authorizing the establishment of EEZs out to 200 miles, the LOS Convention has significantly reduced the areas of high seas in which fishermen may exercise this freedom.

Moreover, while article 87(1)(e) of the Convention preserves the right of all States for their nationals to engage in fishing on the high seas, it makes this right *subject to* a number of important, though general, conditions set forth in articles 116-120:

- Other treaty obligations of the State concerned;
- The rights and duties as well as the interests of coastal States provided for, *inter alia*, in article 63(2) and articles 64-67; and
- Basic obligations to cooperate in the conservation and management of high seas living resources set forth in articles 117-119.

In furtherance of these provisions, the international community has concluded numerous treaties that regulate or prohibit high seas fisheries. Among these treaties are many to which the United States is party, including, *inter alia:*

- International Convention for the Conservation of Atlantic Tunas, May 14, 1966, 20 UST 2887, TIAS No. 6767, 673 UNTS 63;
- Convention for the Establishment of an Inter-American Tropical Tuna Commission, March 3, 1950, 1 UST 230, TIAS No. 2044, 80 UNTS 3;
- Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, February 11, 1992;
- Convention for the Conservation of Salmon in the North Atlantic Ocean, March 2, 1982, TIAS No. 10789;
- Convention on the Conservation of Antarctic Marine Living Resources, May 20, 1980, 33 UST 3476, TIAS No. 10240;
- Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, April 2, 1987, TIAS No. 11100;

• Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, November 24, 1989; and
• International Convention for the Regulation of Whaling, November 19, 1956, 10 UST 952, TIAS No. 4228, 338 UNTS 366.

The United States has also recently participated in the conclusion of two other treaties relating to high seas fishing that are not yet in force, namely, the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, Sen. Treaty Doc. 103-27, and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, Sen. Treaty Doc. 103-24.

The United States was also instrumental in promoting the adoption, by consensus, of United Nations General Assembly Resolutions 44/225, 45/297 and 46/215, which have effectively created a moratorium on the use of large-scale driftnets on the high seas. In pressing for the adoption of these resolutions, the United States relied heavily on the fact that large-scale driftnets in the North Pacific Ocean intercepted salmon of U.S. origin in violation of article 66 of the Convention and indiscriminately killed large numbers of other species, including marine mammals and birds, in violation of the basic conservation and related obligations contained in the Convention. In creating the moratorium, the international community implemented obligations flowing from these provisions of the Convention.

Existing U.S. law implements all pertinent U.S. obligations flowing from the general provisions of articles 116-120 of the Convention and the additional treaties to which the United States is party. The MFCMA also calls upon the Secretary of State to negotiate any additional treaties and other international agreements that may be necessary or appropriate in the fulfillment of U.S. obligations under the Convention to cooperate in the conservation and management of living resources of the high seas (16 U.S.C. § 1822).

"Straddling" Stocks and Highly Migratory Species

While virtually all members of the international community accept the fishery provisions of the Convention as reflective of customary law, differences remain over their interpretation and application, particularly as they relate to so-called "straddling" stocks and highly migratory species. This part of the Commentary will review these provisions in detail, as well as on-going efforts to resolve the differences that remain.

"Straddling" Stocks. Although the Convention does not use the term "'straddling' stocks," that term has come to refer to those stocks described in article 63(2), which provides that:

> 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.

This provision reflects the need for international cooperation in the conservation of stocks that "straddle" the line that separates the EEZ from the high seas beyond. While the Convention recognizes the rights and responsibilities of the coastal State with respect to stocks occurring within its EEZ (article 56), overfishing for the same stock (or stocks of associated species) in the adjacent high seas area can radically undermine efforts by the coastal State to exercise those rights and fulfill those responsibilities.

Article 63(2) obligates the coastal State and the States fishing for such stocks in the adjacent area to "seek to agree" on necessary conservation measures for these stocks in the adjacent area. Three features of this provision are worth noting. First, the coastal State has the right to participate in the negotiations contemplated by article 63(2) whether or not it maintains a fishery for the stocks in question either within its EEZ or in the adjacent high seas area. Second, the conservation measures to be negotiated are for application only in the adjacent high seas area, not in the coastal State's EEZ, although, to be effective, the measures applied in the two areas should be compatible. Finally, article 63(2) leaves unresolved the question of what happens when the States concerned have not been able to agree on necessary measures. The on-going United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, discussed below, is presently grappling with this issue.

While disputes over straddling stocks in other parts of the world remain, article 63(2) provided the basis on which the United States was able to resolve a conflict over the primary straddling stock fishery of concern to it, namely the fishery for the Aleutian Basin stock of Alaskan pollock. This pollock stock is a valuable straddling stock that occurs in the EEZs of both the United States and the Russian Federation, as well as in the high seas area of the Bering Sea, commonly known as the Donut Hole. Overfishing for pollock in the Donut Hole by other States led to a collapse of the stock in the late 1980s. Relying on article 63(2), the United States and the Russian Federation persuaded the fishing States in question to conclude the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, which, once it enters into force, will establish an effective conservation and management regime for pollock in the Donut Hole, consistent with U.S. interests in that stock as a coastal State.

Highly Migratory Species. Article 64 of the Convention provides separate treatment for highly migratory species (HMS), which are those listed in Annex I to the Convention. The list includes, *inter alia*, tuna and billfish. With respect to HMS, article 64 provides that:

> 1. The coastal State and other States whose nationals fish in the region for ... highly migratory species ... 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 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 [Part V of the Convention].

At the time the Convention was concluded, the United States sharply disagreed with most other States over the interpretation of this article. The predominant view was that HMS are treated exactly the same as all other living resources in the sense that they fall within exclusive coastal State authority in the territorial sea and EEZ under articles 2 and 56(1)(a), and are subject to articles 61 and 62. The United States, however, contended that article 64, by calling for international management of HMS throughout their migratory range, derogated from coastal State claims of jurisdiction. According to the U.S. interpretation, a coastal State would not be permitted, absent an agreement, to prevent foreign vessels from fishing for HMS in its EEZ.

Effective January 1, 1992, however, the United States amended the MFCMA to include HMS among all other species over which it asserts sovereign rights and exclusive fishery management authority while such species occur within the U.S. EEZ (16 U.S.C. § 1812). That amendment also recognized, at least implicitly, the right of other coastal States to assert the same sovereign rights and authority over HMS within their EEZs. With this amendment, a long-standing juridical dispute came to an end.

The end of the juridical dispute has not rendered article 64 meaningless, however. While virtually all States now accept that article 64 does not derogate from the rights of coastal States over living resources within their EEZs, article 64 does require all relevant States to cooperate in international management of HMS throughout their range, both within and beyond the EEZ. Article 64 thus differs in this critical respect from article 63(2), which obligates relevant States to cooperate in the establishment of necessary conservation measures for "straddling" stocks only in the high seas area adjacent to the EEZ.

State practice has generally followed this distinction between straddling stocks and HMS. For example, such tuna treaties as the International Convention for the Conservation of Atlantic Tunas and the Convention for the Establishment of an Inter-American Tropical Tuna Commission apply both within and beyond the EEZs in their respective regions. Similarly, the International Convention for the Regulation of Whaling applies on a global basis, both within and beyond EEZs. By contrast, the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea and the Convention on Future Multilateral Cooperation in Northwest Atlantic Fisheries, both of which regulate fisheries for "straddling" stocks, apply only in the high seas areas adjacent to the relevant EEZs.

One justification for this distinction rests on the biological differences between the two categories of stocks. Broadly speaking, "straddling" stocks, such as cod in the Northwest Atlantic and pollock in the Bering Sea, occur primarily in the EEZs of a very few coastal States. Outside the EEZs, these stocks are fished in relatively discrete areas of the adjacent high seas. Accordingly, it seems reasonable for the coastal State "unilaterally" to determine conservation and management measures applicable in its EEZ, while the high seas fishing States and the coastal State(s) jointly develop such measures applicable in the adjacent areas.

Most HMS, by contrast, migrate through thousands of miles of open ocean. They are fished in the EEZs of large numbers of coastal States and in many areas of the high seas. No single coastal State could adopt effective conservation and management measures for such a stock as a whole. As a result, international cooperation is necessary in the development of such measures for these stocks throughout their range, both within and beyond the EEZ.

The list of HMS contained in Annex I to the Convention may not, on the basis of scientific evidence available today, reflect most accurately those marine species that in fact migrate most widely. The MFCMA also defines HMS for the purpose of that statute by listing some, but not all, of the marine species included in Annex I (16 U.S.C. § 1802(14)). The absence of some Annex I species from the MFCMA definition would not prevent the United States from fulfilling its obligations under article 64 to cooperate in developing international regimes for HMS regulation, however. Indeed, the MFCMA calls upon the Secretary of State, in consultation with the Secretary of Commerce, to negotiate agreements to establish such regimes (16 U.S.C. § 1822(e)).

Finally, although Annex I includes dolphins and cetaceans among the listed HMS, this would not prejudice the provisions of articles 65 and 120, which preserve the right of coastal States and the competence of international organizations, as appropriate, to prohibit, limit or regulate the taking of marine mammals more strictly than otherwise provided for in the Convention.

United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. As noted above, articles 63(2) and 64 establish, for "straddling" stocks and HMS, respectively, general obligations for coastal States and other States whose nationals fish for these stocks to cooperate in conservation and management. Within the framework of these general obligations, the international community has concluded numerous treaties and other agreements to regulate fisheries for "straddling" stocks and HMS.

The existence of this framework and of these treaties and agreements has not resolved all differences regarding the conservation and management of these species, however. With a view to resolving these differences, Agenda 21, adopted by the 1992 United Nations Conference on Environment and Development, called upon the United Nations to convene a conference specifically devoted to this subject. As the

resulting United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks has not yet completed its work, it would be premature to speculate on its outcome, except to say that all participating States have agreed that any such outcome must be consistent with the LOS Convention.

Dispute Settlement

The Convention's dispute settlement provisions, as they apply to fisheries disputes, reinforce the scheme of the fishery provisions of the Convention as a whole. A coastal State need not submit to binding arbitration or adjudication any dispute relating to the exploration, exploitation, conservation, or management of living resources in the EEZ, including, for example, its discretionary powers for determining the allowable catch. However, such disputes may, in limited circumstances, be referred to compulsory but non-binding conciliation.

Fishing beyond the EEZ is subject to compulsory, binding arbitration or adjudication. This will give the United States an additional means by which to enforce compliance with the Convention's rules relating to the conservation and management of living marine resources and measures required by those rules, including, for example, the prohibition in article 66 on high seas salmon fishing, the application of articles 63(2) and 116 in the Central Bering Sea in light of the new Pollock Convention, and the application of articles 66, 116 and 192 in light of the United Nations General Assembly Resolutions creating a moratorium on large-scale high seas driftnet fishing.

Neither the Convention's dispute settlement provisions nor any of its other provisions, however, limit the ability of the United States to use other means, including trade measures, provided under U.S. law to promote compliance with environmental and conservation norms and objectives.

The dispute settlement provisions as they relate to living marine resources are discussed more fully below in the section on dispute settlement.

THE CONTINENTAL SHELF (Article 56(1); Part VI, Articles 76-78, 80-80, 85; Annex II; Final Act, Annex II)

Part VI of the Convention, together with other related provisions on the continental shelf, secures for the coastal State exclusive control over the exploration and exploitation of the natural resources, including oil and gas, of the sea-bed and its subsoil within 200 miles of the coastal baselines and to the outer edge of the geological continental margin where the margin extends beyond 200 miles.

United States interests are well served by the Convention's provision for exclusive coastal State control over offshore mineral resources to the outer edge of the continental margin. In addition, the Convention's standards and procedures for delimiting the outer edge of the margin will help avoid uncertainty and disagreement over the maximum extent of coastal State continental shelf jurisdiction. The resulting clarity advances both the resource management and commercial interests of the United States, as well as its interests in stabilizing claims to maritime jurisdiction by other States.

In order to provide necessary legal certainty with respect to coastal State control over exploration and development activities on the continental margin beyond 200 miles, the Convention sets forth detailed criteria for determining the outer edge of the margin. In addition, it provides for establishment of an expert body, the Commission on the Limits of the Continental Shelf, to provide advice and recommendations on the application of these criteria.

Only a limited number of coastal States, including the United States, have significant areas of adjacent continental margin that extend beyond 200 miles from the coast. Many States preferred a universal limit at 200 miles for all. The Convention balances the extension of coastal State control over the natural resources of the continental margin seaward of 200 miles with a modest obligation to share revenues from successful minerals development seaward of 200 miles. The potential economic benefits of these resources to the coastal State greatly exceed any limited revenue sharing that may occur in the future.

The Concept of the Continental Shelf

From a geological perspective, the continental shelf is only one part of the submerged prolongation of land territory offshore. It is the inner-most of three geomorphological areas—the continental slope and the continental rise are the other two—defined by changes in the angle at which the sea-bed drops off toward the deep ocean floor. The shelf, slope and rise, taken together, are geologically known as the continental margin (see Figure 2). Worldwide, there is wide variation in the breadths of these areas.

National claims to the continental shelf in modern times date from President Truman's 1945 Proclamation on the Continental Shelf, by which the United States asserted exclusive sovereign rights over the resources of the continental shelf off its coasts. The Truman Proclamation specifically stated that waters above the continental shelf were to remain high seas and that freedom of navigation and overflight were not to be affected (Presidential Proclamation No. 2667, Sept. 28, 1945, 3 CFR 67 (1943-48 Comp.)).

Differing interpretations and application of concepts underlying the Truman Proclamation led to international efforts to develop a more precise definition of the continental shelf. The first result of these efforts was the Continental Shelf Convention that emerged from the First United Nations Conference on the Law of the Sea in 1958. It provides that the continental shelf refers to:

> the sea-bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

The "exploitability criterion" of the Continental Shelf Convention, however, itself created considerable uncertainty as to how far seaward a country was entitled to exclusive rights over the resources of the shelf.

The 1982 Convention discards this definition of the continental shelf in favor of expanded objective limits and a method for establishing their permanent location. This change was designed to accommodate coastal State interests in broad control of resources and in supplying the certainty and stability of geographic limits necessary to promote investment and avoid disputes.

Definition of the Continental Shelf

Article 76(1) of the Convention defines the continental shelf as follows:

> The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

This definition allows any coastal State, regardless of the sea floor features off its shores, to claim a 200-mile continental shelf. This is consistent with the provisions of articles 56 and 57, which include among the rights of a coastal State within its EEZ sovereign rights for exploring and exploiting nonliving resources of the sea-bed and its subsoil.

The effect is to give coastal States whose physical continental margins extend less than 200 miles from the coast sovereign rights over the natural resources of the sea-bed and subsoil up to the 200-mile limit. This is of particular importance in those parts of the United States with a narrow continental margin, such as areas off the Pacific coast, Hawaii, the Commonwealths of Puerto Rico and of the Northern Mariana Islands, and most other islands comprising U.S. territories and possessions.

Rights and Duties

The coastal State's rights under Part VI over the natural resources of the continental shelf exist independent of any action by the coastal State, and apply whether or not the coastal State has declared an EEZ. Article 77 reiterates that the coastal State has sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources. The sovereign rights of the coastal State are balanced with provisions protecting the freedom of navigation and the other rights and freedoms of other States from infringement or unjustifiable interference by the coastal State. Under article 78, rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the airspace above those waters.

The right of all States to lay submarine cables and pipelines on the continental shelf is specifically protected by article 79, which is discussed above in the section on the high seas.

Several articles enumerate specific rights of the coastal State regarding activities on the continental shelf. Those relating to artificial islands, installations and structures (article 80) are the same as the rights in article 60 already discussed in connection with the EEZ. Drilling for all purposes (article 81), and tunnelling (article 85) are under coastal State control. The provisions of article 83 on delimitation are discussed below in the section of this Commentary on maritime boundary delimitation.

Limits of the Continental Shelf Beyond 200 Miles (Article 76)

Definition. Paragraphs 3-7 of article 76 provide a detailed formula for determining the extent of the continental shelf of a coastal State, based on the definition in paragraph 1, where its continental margin extends beyond 200 miles from the coast. Although this formula uses certain geological concepts as points of departure, its object is legal not scientific. It is designed to achieve reasonable certainty consistent with relevant interests and its effect is to place virtually all sea-bed hydrocarbon resources under coastal State jurisdiction.

The formula provides two alternative methods for determining the outer edge of the continental margin (paragraph 4). The first is based on the thickness of sedimentary rock (rock presumed to be of continental origin).

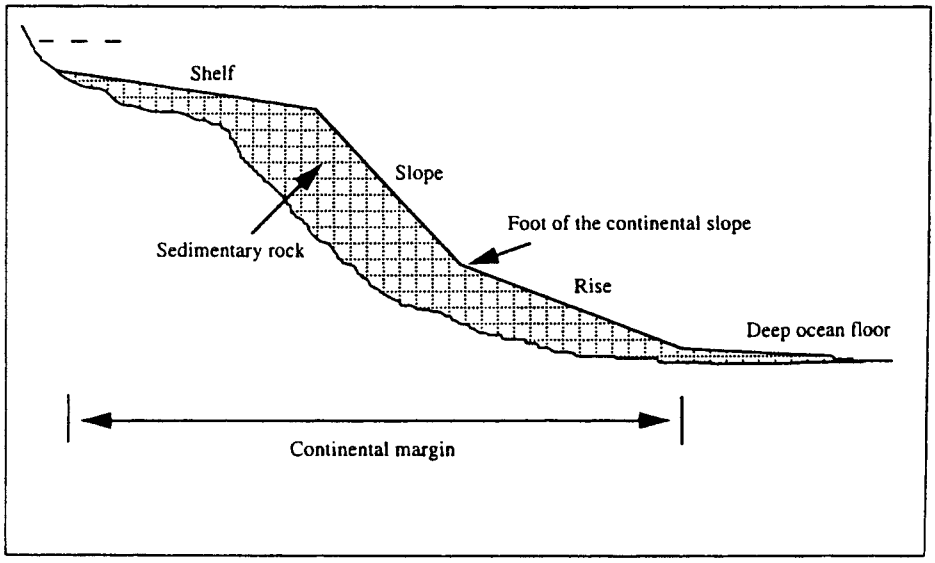

Figure 2. Profile of the Continental Margin

Reproduced by permission from University of Virginia Center for Oceans Law and Policy. *United Nations Convention on the Law of the Sea 1982: A Commentary*, vol. II, page 877 (Nandan & Rosenne eds. 1993).

The limits of the margin are to be fixed by points at which the thickness of sedimentary rock "is at least 1 percent of the shortest distance from such point to the foot of the continental slope." (Thus, if at a given point beyond 200 miles from the baseline, the sediment thickness is 3 kilometers, then that point could be as much as 300 kilometers seaward of the foot of the continental slope.)

The second alternative is to fix the outer limits of the margin by points that are not more than 60 miles from the foot of the continental slope.

These alternative methods are subject to specific qualifications to ensure that their application does not produce unintended results.

First, the continental margin does not include the deep ocean floor with its ocean ridges (paragraph 3).

Second, the outer limit of the continental margin may not extend beyond 350 miles from the coast or 100 miles from the 2,500 meter isobath, whichever is further seaward (paragraph 5). This provision is neither an extension of the 200-mile limit in paragraph 1 nor an alternative definition of the continental margin and its outer edge contained in paragraph 4. It applies only to areas where the outer edge of the continental margin, determined in accordance with either of the methods specified in paragraph 4, might otherwise be located seaward of both of the limits contained in paragraph 5.

Third, notwithstanding the existence of alternative maximum limits in paragraph 5, the outer limit of the continental shelf shall not exceed 350 miles from the coast on submarine ridges, provided that this limitation on the use of either alternative limit set forth in paragraph 5 does not apply "to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs" (paragraph 6).

The United States understands that features such as the Chukchi plateau and its component elevations, situated to the north of Alaska, are covered by this exemption, and thus not subject to the 350-mile limitation set forth in paragraph 6. Because of the potential for significant oil and gas reserves in the Chukchi plateau, it is important to recall the U.S. statement made to this effect on April 3, 1980 during a Plenary session of the Third United Nations Conference on the Law of the Sea, which has never given rise to any contrary interpretation. In the statement, the United States representative expressed support for the provision now set forth in article 76(6) on the understanding that it is recognized that features such as the Chukchi plateau situated to the north of Alaska and its component elevations cannot be considered a ridge and are covered by the last sentence of paragraph 6.

For the United States, the continental shelf extends beyond 200 miles in a variety of areas, including notably the Atlantic coast, the Gulf of Mexico, the Bering Sea and the Arctic Ocean. Other States with broad margins include Argentina, Australia, Brazil, Canada, Iceland, India, Ireland, Madagascar, Mexico, New Zealand, Norway, the Russian Federation and the United Kingdom.

Delineation. Article 76, paragraphs 7-10, deal with the delineation of the outer limits of the continental shelf. For reasons of simplicity and certainty, limits beyond 200 miles are to be delineated by straight lines no longer than 60 miles connecting fixed points defined by coordinates of latitude and longitude (paragraph 7). Coastal States with continental shelves extending beyond 200 miles are to provide information on those limits to the Commission on the Limits of the Continental Shelf, an expert body established by Annex II to the Convention. The Commission is to make recommendations to coastal States on these limits. The coastal State is not bound to accept these recommendations, but if it does, the limits of the continental shelf established by a coastal State on the basis of these recommendations are final and binding on all States Parties to the Convention and on the International Sea-bed Authority.

Article 76(9) requires the coastal State to deposit with the Secretary-General of the United Nations the relevant charts and data permanently describing the outer limits of its continental shelf both at and beyond 200 miles. This promotes stability and predictability for investors and minimizes disputes.

Commission on the Limits Of the Continental Shelf (Annex II)

The Commission on the Limits of the Continental Shelf is to consist of 21 members, who are to be experts in geology, geophysics or hydrography, but may only be nationals of States Parties. A coastal State that intends to establish its continental shelf beyond 200 miles is required by Annex II, article 4 to provide particulars of those limits to the Commission with supporting scientific and technical data no later than 10 years following entry into force for it of the Convention. In some cases, fiscal and technical limitations may mean that this submission merely begins a process that the coastal State will wish to augment with further study and data before the Commission makes its recommendations.

The Commission is authorized to make recommendations on the outer limits of the continental shelf beyond 200 miles. Such recommendations on the submission are prepared by a seven-member subcommission and approved by a two-thirds majority of Commission members (Annex II, articles 5 and 6). If the coastal State agrees, the limits of the continental shelf established by the coastal State on the basis of these recommendations are final and binding (article 76(8)), thus providing stability to these claims which may not be contested.

In the case of disagreement by the coastal State with the recommendations of the Commission, Annex II, article 8 requires the coastal State, within a reasonable time, to make a revised or new submission to the Commission.

The Commission is designed to provide a mechanism to prevent or reduce the potential for dispute and uncertainty over the precise limits of the continental shelf where the continental margin extends beyond 200 miles. The process is not adversarial, and the International Sea-bed Authority plays no

part in determining the outer limit of the continental shelf. Ultimate responsibility for delimitation lies with the coastal State itself, subject to safeguards against exaggerated claims. The procedures of the Commission are structured to provide incentives to ensure that recommendations are not made that are likely to be rejected by the coastal State. For example, if requested, the Commission may aid the coastal State in preparing its data for submission.

Annex II provides for the election of the Commission within 18 months of the entry into force of the Convention. Because the continental shelf of the United States extends beyond 200 miles in areas of potential oil and gas reserves, because of its interest in consolidating the rights of coastal States over their reserves, as well in discouraging exaggerated claims to offshore jurisdiction, it is important for the United States to become party as early as possible in order to be able to participate in the selection of the members of the Commission, as well as to nominate U.S. nationals for election to the Commission.

The Commission plays no role in the question of delimitation between opposite or adjacent States.

Revenue Sharing (Article 82). Article 82(1) provides that coastal States shall make payments or contributions in kind in respect of exploitation of the non-living resources of the continental shelf beyond 200 miles from the coastal baselines. The choice between "payments" and "contributions in kind" is left to the coastal State, which normally can be expected to elect to make payments.

No revenue sharing is required during the first five years of production at any given site (article 82(2)). Thereafter, payments and contributions are to be made with respect to all production at that site. From the sixth to the twelfth year of production, the payment or contribution is to be made at the rate of one per cent per year of the value or volume of production at the site, increasing annually by one per cent. After the twelfth year, the rate remains at seven per cent.

The requisite payments are a small percentage of the value of the resources extracted at the site. That value is itself a small percentage of the total economic benefits derived by the coastal State from offshore resources development. Article 82(3) exempts a small category of developing States from making payments or contributions in kind. Payments are to be distributed by the Authority to States Parties on the basis of criteria for distribution set out in article 82(4). These funds are distinct from, and should not be confused with, the Authority's revenues from deep mining operations under Part XI. They may not be retained or used for purposes other than distribution under article 82, paragraph 4.

Revenue sharing for exploitation of the continental shelf beyond 200 miles from the coast is part of a package that establishes with clarity and legal certainty the control of coastal States over the full extent of their geological continental margins. At this time, the United States is engaged in limited exploration and no exploitation of its continental shelf beyond 200 miles from the coast. At the same time, the United States is a broad margin State, with significant resource potential in those areas and with commercial firms that operate on the continental shelves of other States. On balance, the package contained in the Convention, including revenue sharing at the modest rate set forth in article 82, clearly serves United States interests.

Statement of Understanding Concerning a Specific Method To Be Used in Establishing the Outer Edge of the Continental Margin (Annex II to the Final Act). Annex II to the Final Act contains the Statement of Understanding adopted by the Third United Nations Conference on the Law of the Sea that addresses the unusual geographic circumstances involved in determining the outer edge of the continental margin of Sri Lanka and India in the southern part of the Bay of Bengal.

This Statement of Understanding bears upon the interpretation and application of the Convention, but is not part of the Convention as adopted by the Conference and submitted for the advice and consent of the Senate.

Domestic Legislation

The principal U.S. legislation governing the U.S. continental shelf is contained in the Submerged Lands Act of 1953, as amended, 43 U.S.C. §1301 *et seq.*, and the Outer Continental Shelf Lands Act of 1953, as amended, 43 U.S.C. §1331 *et seq.*

DEEP SEA-BED MINING (Part XI and Agreement on Implementation of Part XI; Annexes III and IV)

Part XI and Annexes III and IV to the Convention (Part XI) and the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (Agreement) establish the legal regime governing exploration and exploitation of mineral resources of the deep sea-bed beyond coastal State jurisdiction (sea-bed mining regime).

Flaws in Part XI caused the United States and other industrialized States not to become parties to the Convention. The unwillingness of industrialized States to adhere to the Convention unless its sea-bed mining provisions were reformed led the Secretary-General of the United Nations, in 1990, to initiate informal consultations aimed at achieving such reform and thereby promoting widespread acceptance of the Convention. These consultations resulted in the Agreement, which was adopted by the United Nations General Assembly on July 28, 1994 by a vote of 121 (including the United States) in favor with 0 opposed and 7 abstentions. As of September 8, 1994, 50 countries had signed the Agreement, including the United States (subject to ratification). More are expected to follow.

The objections of the United States and other industrialized States to Part XI were that:

- It established a structure for administering the sea-bed mining regime that did not accord industrialized States influence in the regime commensurate with their interests;
- It incorporated economic principles inconsistent with free market philosophy; and

• Its specific provisions created numerous problems from an economic and commercial policy perspective that would have impeded access by the United States and other industrialized countries to the resources of the deep sea-bed beyond national jurisdiction.

The decline in commercial interest in deep sea-bed mining, due to relatively low metals prices over the last decade, created an opening for reform of Part XI. This waning interest and resulting decline in exploration activity led most States to recognize that the large bureaucratic structure and detailed provisions on commercial exploitation contained in Part XI were unnecessary. This made possible the negotiation of a scaled-down regime to meet the limited needs of the present, but one capable of evolving to meet those of the future, coupled with general principles on economic and commercial policy that will serve as the basis for more detailed rules when interest in commercial exploitation reemerges.

The waning of the Cold War and the increasing tendency by nations in Eastern Europe and the developing world to embrace market principles gave further impetus to the effort to reform Part XI. These factors led the States that had historically supported Part XI to accept the need for reform. Finally, the 60th ratification of the Convention on November 16, 1993, made it apparent that a failure to reform Part XI before the entry into force of the Convention on November 16, 1994, could jeopardize the future of the entire Convention and seriously impede future efforts to exploit mineral resources beyond national jurisdiction.

The Agreement fully meets the objections of the United States and other industrialized States to Part XI. The discussion that follows describes the sea-bed mining regime of the Convention and the changes that have been made by the Agreement. The legal relationship between the Convention and the Agreement is then considered, as well as the provisional application of the Agreement.

The Sea-bed Mining Regime

Scope of the Regime. The sea-bed mining regime applies to "the Area," which is defined in article 1 of the Convention to mean the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction. The Area is that part of the ocean floor seaward of coastal State jurisdiction over the continental shelf, that is, beyond the continental margin or beyond 200 miles from the baseline from which the breadth of the territorial sea is measured where the margin does not extend that far. It comprises approximately 60 percent of the sea-bed.

The sea-bed mining regime governs mineral resource activities in the Area. Article 1(3) defines "activities in the Area" as all activities of exploration for or exploitation of the mineral resources of the Area. Those resources are all solid, liquid or gaseous mineral resources on or under the sea-bed. Prospecting, however, does not require prior authorization, but may be subject to general regulation.

Common Heritage of Mankind. Article 136 provides that the Area and its resources are the common heritage of mankind. This principle reflects the fact that the Area and its resources are beyond the territorial jurisdiction of any nation and are open to use by all in accordance with commonly accepted rules.

This principle has its roots in political and legal opinion dating back to the earliest days of the Republic. President John Adams stated that "the oceans and its treasures are the common property of all men." With respect to the sea-bed in particular, President Lyndon Johnson declared that "we must ensure that the deep seas and the ocean bottoms are, and remain, the legacy of all human beings." The United States joined in the adoption, by consensus, of the United Nations General Assembly Resolution 2749 (XXV)(1970), which set forth this principle. The Deep Seabed Hard Mineral Resources Act of 1980 (30 U.S.C. § 1401 *et seq.*)(DSHMRA) incorporated this principle into U.S. law.

For reasons of national security, the United States has also supported this principle to ensure that the deep sea-bed is not subject to national appropriation, which could lead to confrontation or impede the mobility or operations of U.S. armed forces. Article 137, like the DSHMRA, advances these interests by providing that no State shall claim or exercise sovereignty over any part of the Area or its resources or recognize such claims by others.

In furtherance of this principle, article 141 declares the Area to be open to use by all States. Only mining activities are subject to regulation by the International Sea-bed Authority (discussed below). Other activities on the deep sea-bed, including military activities, telecommunications and marine scientific research, may be conducted freely in accordance with principles of the Convention pertaining to the high seas, including the duty to have reasonable regard to other uses.

Part XI, as modified by the Agreement, gives specific meaning to the common heritage principle as it applies to the mineral resources of the sea-bed beyond coastal State jurisdiction. It is worth noting that the Agreement, by restructuring the sea-bed mining regime along free market lines, endorses the consistent view of the United States that the common heritage principle fully comports with private economic activity in accordance with market principles.

Administration of the Regime

International Sea-bed Authority. To administer the sea-bed mining regime, articles 156-7 of the Convention establish a new international organization, the International Sea-bed Authority (Authority). Article 158 establishes the three principal organs of the Authority: the Assembly, the Council and the Secretariat. In addition, as subsidiary organs to the Council, article 163 creates a Legal and Technical Commission. Section 9 of the Annex to the Agreement adds a Finance Committee.

Article 163 of the Convention also provides for an Economic Planning Commission. However, section 1(4) of the Annex to the Agreement conditions the establishment of the Commission on a future decision by the Council and, for the time being, delegates its functions to the Legal and Technical Commission.

With the exception of the Secretariat, all of these organs consist of representatives whose salaries and expenses are paid by their own States.

Assembly. The Assembly provided for in articles 159-160 of the Convention is a plenary body of all members of the Authority. Its main specific functions are to elect the Council, to elect a Secretary-General, to assess contributions, to give final approval to rules and regulations and to the budget, and to decide on the sharing of revenues to the Authority from mining.

Because of the size of the Assembly, and because its composition and voting rules do not necessarily ensure adequate protection for all relevant interests, the Convention and the Agreement provide that the important decision-making functions of the Assembly are exercised concurrently with, or are based on the recommendations of, the Council or the Finance Committee, or both.

Council. The Council is the executive body of the Authority and as such is primarily responsible for the administration of the sea-bed mining regime. Article 161 provides that the Council is to be composed of 36 members, four from the major consumers of minerals, four from the largest investors in deep sea-bed mining, four from major land-based producers of minerals, six to represent various interests among developing countries, and the remaining 18 to achieve overall equitable geographic distribution.

The primary functions of the Council, outlined in article 161, are to supervise the implementation of the sea-bed mining regime, to approve plans of work for exploration or exploitation of mineral resources, to oversee compliance with approved plans of work, to adopt and provisionally apply rules and regulations pending final approval by the Assembly, to nominate candidates for Secretary-General of the Authority, and to make recommendations to the Assembly on subjects upon which the Assembly must make decisions.

Part XI requires the Assembly to make many of its decisions on the basis of recommendations from the Council. Section 3(4) of the Annex to the Agreement expands this requirement to cover virtually all decisions of the Assembly and further provides that, if the Assembly disagrees with a Council recommendation, it must return the issue to the Council for further consideration.

Legal and Technical Commission. The Legal and Technical Commission is a fifteen-member body of technical experts elected by the Council. Under article 165, its primary functions are to review and make recommendations to the Council on the approval of plans of work, to prepare draft rules and regulations, to direct the supervision of activities pursuant to approved plans of work, to prepare environmental assessments and recommendations on protection of the marine environment and to monitor the environmental impacts of activities in the Area.

Economic Planning Commission. Like the Legal and Technical Commission, the Economic Planning Commission was to be a fifteen-member technical body. As noted above, the Economic Planning Commission will not be established in the near term; its functions will be performed by the Legal and Technical Commission. Those functions, defined in article 164, are mainly to review trends and factors affecting supply, demand and prices for minerals derived from the Area and to make recommendations on assistance to developing States that are shown to be adversely affected by activities in the Area (see discussion of the assistance fund below). The fact that such questions will not arise until commercial mining takes place made it reasonable to defer the Commission's establishment.

Finance Committee. In response to proposals by the United States and other industrialized States, section 9 of the Annex to the Agreement establishes a Finance Committee. Section 9(3) requires the Committee to include the five largest contributors to the budget until such time that the Authority generates sufficient funds for its administrative expenses by means other than assessed contributions. Section 3(7) provides that decisions of the Council and the Assembly having financial or budgetary implications shall be based on recommendations of the Finance Committee, which must be adopted by consensus.

The Functional-Evolutionary Approach

One of the major themes in the negotiations that led up to the Agreement was the need for the Authority to be cost-effective. While this was a prime concern of industrialized States, it also had broad support among developing countries. Sections 1(2) and (3) of the Annex to the Agreement accordingly stipulate that the establishment of the Authority and its organs, and the frequency, duration and scheduling of meetings, are to be governed by the objective of minimizing costs while ensuring that the Authority evolves in keeping with the functions it must perform.

Thus, as noted above, the Economic Planning Commission will not be established until a future decision of the Council, or the approval of a plan of work for commercial exploitation. In addition, sections 1(4) and (5) of the Annex to the Agreement identify the specific early functions on which the Authority should concentrate prior to commercial mining. These functions largely relate to approving plans of work for existing mining claims, monitoring compliance, keeping abreast of trends in the mining industry and metal markets, adopting necessary rules and regulations relevant to various stages of mining as interest emerges, promoting marine scientific research, and monitoring scientific and

technical developments (particularly related to protection of the environment).

The evolutionary approach also underlies the decision to postpone the elaboration of very specific rules to govern sea-bed mining until the international community better understands the nature of mining activities likely to occur on a commercial scale. Instead, the Agreement establishes a series of broad reforms based on free market principles that will serve as the basis for more specific rules at an appropriate time. Significant improvements to the decision-making structure of the Authority, discussed below, made it possible for the United States and other industrialized States to have confidence that such rules and regulations will protect their interests.

Acquisition of Mining Rights

Article 153 and Annex III to the Convention govern the system for acquiring mining rights.

Prospecting. Article 2 of Annex III to the Convention does not require prior approval for prospecting. However, prospectors must submit a written undertaking to comply with the Convention. Prospecting, which may be conducted simultaneously by more than one prospector, does not confer any rights with respect to the resources.

Exploration and Exploitation. Article 153 and article 3 of Annex III provide that exploration and exploitation activities may be conducted by States Parties or entities sponsored by States Parties. The applicant submits a written plan of work that upon approval will take the form of a contract between the applicant and the Authority.

Under article 4 of Annex III, entities shall be qualified if they meet standards for nationality, control and sponsorship set forth in article 153(2)(b), as well as other general standards related to technical and financial capabilities and to their performance under previous contracts.

Protection of the Marine Environment. Article 145 and Annex III, article 17 of the Convention provide for the adoption of rules, regulations and procedures by the Council to ensure effective protection of the marine environment from harmful effects of deep sea-bed mining activity.

Article 162 also authorizes the Council to disapprove areas for exploitation where there is a risk of serious harm from mining activities already underway.

Section 1(7) of the Annex to the Agreement strengthens these requirements by requiring that all applications for approval of plans of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and a program for oceanographic and baseline environmental studies. Section 1(5)(g) of the Annex to the Agreement also requires the Authority to adopt rules, regulations and procedures on marine environmental protection as part of its early functions prior to the approval of the first plan of work for exploitation.

Application Fees. Article 13, paragraph 2 of Annex III to the Convention provides for an application fee of U.S.$500,000. Section 8(3) of the Annex to the Agreement requires instead a U.S.$250,000 fee for each phase (i.e., exploration or exploitation). If the fee exceeds the cost incurred in processing the application, the Authority is required to refund the difference to the applicant.

Approval of Applications. The Authority shall review and approve plans of work on a first-come first-served basis. Special decision-making procedures apply to the approval of plans of work. Under article 165(2), the Legal and Technical Commission shall review applications and make recommendations to the Council on the approval of plans of work. The Commission is required to base its recommendations on whether the applicant meets the financial and technical qualifications mentioned above, whether its proposed plan of work otherwise meets the rules and regulations adopted by the Council, and whether the applicant has included undertakings to comply with the Convention and with rules, regulation and procedures adopted pursuant thereto. Decisions by the Commission are taken by a simple majority of its fifteen members.

If the Legal and Technical Commission recommends approval of a plan of work, section 3(1) of the Annex to the Agreement requires the Council to approve the plan of work within 60 days, unless the Council decides otherwise by a two-thirds majority of its members, including a majority of the members present and voting in each of its chambers. The effects of this provision are to require the Council to act in a timely manner and to allow two members of either the consumer or investor chambers of the Council to ensure that such a plan of work is approved. If the Commission recommends against approval of an application, the Council can nevertheless approve the application based on its normal decision-making procedures for issues of substance.

Security of Tenure—Priority of Right. Section 1(9) of the Agreement requires the Authority to approve plans of work for exploration for a period of 15 years. At the end of this period, an applicant must apply for approval of a plan of work for exploitation. If, however, the applicant can demonstrate that circumstances beyond its control prevent completion of the work necessary to move to exploitation, or that commercial circumstances do not justify proceeding to exploitation, the Authority must extend the approved plan of work for exploration in additional five-year increments at the request of the contractor.

Under article 16 of Annex III to the Convention, approved plans of work shall accord the contractor exclusive rights in the area covered by the plan of work in respect of a specific category of resources. Article 10 of Annex III provides that an approved plan of work for exploration confers a priority of right on the applicant for approval of a plan of work for exploitation in the same area. The priority may be withdrawn for unsatisfactory performance. However, section 1(13) of the Annex to the Agreement requires unsatisfactory

performance to be judged on the basis of a failure to comply with the terms of an approved plan of work notwithstanding written warnings by the Authority.

Article 19 of Annex III provides that contracts cannot be revised except by consent of both parties (i.e., the applicant and the Authority).

Applications by Pioneer Investors. A special procedure exists for grandfathering into the sea-bed mining regime the mining sites of enterprises that have conducted substantial activities prior to the entry into force of the Convention. This procedure applies to entities from Japan, the Russian Federation, France, China, India, Eastern Europe and South Korea that have registered sites with the Preparatory Commission for the International Sea-bed Authority and for the International Tribunal for the Law of the Sea (Prepcom) in accordance with Resolution II of the Final Act of the Third United Nations Conference on the Law of the Sea. The same procedure also applies to the sites of the mining consortia that have been licensed under the sea-bed mining laws of the United States, Germany or the United Kingdom.

Section 1(6)(a)(ii) of the Annex to the Agreement allows entities that have already registered sites with the Prepcom 36 months to file for the approval of a plan of work under the Convention without jeopardy to their rights to the mine site. When they file an application, and accompany it with the certificate of compliance recently issued by the Prepcom, it will be approved by the Authority, provided that it conforms to the rules, regulations and procedures of the Authority.

With regard to consortia licensed by the United States, Germany or the United Kingdom, section 1(6)(a)(i) of the Annex to the Agreement provides that they will be considered to have met the financial and technical qualifications necessary for approval of a plan of work if their sponsoring State certifies that they have expended U.S.$30,000,000 in research and exploration activities and have expended no less than 10 percent of that amount in the location, survey and evaluation of the area referred to in the plan of work. All three of the consortia with current exploration permits issued pursuant to the DSHMRA meet this standard. In addition, section 1(6)(a)(iii) provides that, in keeping with the principle of non-discrimination, the contracts with these consortia "shall include arrangements which shall be similar to and no less favorable than those agreed with" any pioneer investor registered by the Prepcom.

Reserved Areas. Applicants for exploration rights under the Convention must set aside reserved areas for possible future use by the Enterprise (an arm of the Authority that, under certain circumstances, may undertake mining activity in its own right). Article 8 of Annex III to the Convention requires that each application cover an area sufficiently large and of sufficient value to allow for two mining operations. The applicant is responsible for dividing the area into two parts of equal estimated value. The Authority must then designate one of the areas to be reserved for future use by the Enterprise and the other to be reserved for the applicant.

Section 2(5) of the Annex to the Agreement modifies articles 8 and 9 of Annex III to the Convention to take into account the fact that the Enterprise, if it begins to undertake mining activity, will operate through joint ventures and to allow an applicant to participate in the exploration and development of a reserved area that it prospected. Under section 2(5), the miner that contributed the area has the first option to enter into a joint venture with the Enterprise for the exploration and exploitation of that area. Furthermore, if the Enterprise does not submit an application for approval of a plan of work for the reserved area within 15 years of the date on which that area was reserved, or the date on which the Enterprise becomes operational, whichever is later, the miner that contributed the area can apply to exploit it if the miner makes a good faith offer to include the Enterprise as a joint venture partner.

The pioneer investors that registered their claims with the Prepcom complied with this obligation at the time of registration. However, the areas registered by some pioneer investors (i.e., Japan, France and the Russian Federation) were not large enough to provide a reserved area. After some negotiation, the Prepcom allowed these pioneer investors collectively to reserve a single site and to self-select a major portion of the area they retained. If U.S.-licensed consortia confronted practical problems in registering claims with the Authority, they would be entitled to "no less favorable treatment" under section 1(6)(a)(iii) of the Annex to the Agreement.

Compliance. Article 153(4) of the Convention requires the Authority to exercise such control as is necessary to ensure compliance with the Convention, rules and regulations adopted by the Council, and approved plans of work. In addition, article 4(4) of Annex III and article 139 provide that States Parties are also responsible for ensuring compliance by the nationals or enterprises they sponsor. However, a State Party will not be liable for damage caused if it has taken reasonable measures within the framework of its legal system to ensure compliance by persons or entities under its jurisdiction.

Decision-making

As noted above, decision-making was one of the key areas of concern for the United States and other industrialized States in the reform of Part XI. In particular, the United States objected to the absence of a guaranteed seat in the 36-member Council, to the possibility that the Assembly could dominate decisions within the Authority (discussed above) and to the fact that industrialized countries did not have influence on the Council commensurate with their interests.

U.S. Seat. The United States is now guaranteed a seat on the Council in perpetuity. Section 3(15) of the Annex to the Agreement provides that the consumer chamber in the Council shall include the State that, upon the entry into force of the Convention, has the largest economy in terms of gross domestic product.

Decisions by the Council. Because the requirements for representation of developing countries and for equitable geographic distribution set forth in article 161 of the Convention would likely produce a majority of developing States on the Council, the United States and other industrialized States sought to change the voting rules to ensure that the United States, and others with special interests that would be affected by decisions of the Authority, would have special voting rights in the Council. Section 3(5) of the Annex to the Agreement provides that, when consensus cannot be reached in the Council, decisions on questions of substance shall be taken by a two-thirds majority of the members present and voting, provided that the decision is not opposed by a majority in any of the four-member consumer, investor or producer chambers in the Council.

This chambered voting arrangement will ensure that the United States and two other consumers, or three investors or producers acting in concert, can block substantive decisions in the Council. The only exceptions to this rule are for four substantive decisions that, under article 161(8)(d) of the Convention, must be made by consensus. Thus, consensus is required for any decision to provide protection to developing States that are land-based producers of minerals from adverse effects from sea-bed mining; any decision to recommend to the Assembly rules and regulations on the sharing of financial benefits from sea-bed mining (revenue sharing); any decision to adopt and apply provisionally rules, regulations and procedures implementing the sea-bed mining regime or amendments thereto; and any decision to adopt amendments to the sea-bed mining regime. The requirement that these issues be made by consensus in effect gives the United States a veto with respect to them.

Developing States argued that the six-member developing country category in the Council should also be treated as a chamber for voting purposes. The United States and other industrialized States opposed this on the grounds that developing States in the Council already were assured of sufficient numbers to protect their interests. Sections 3(9) and 3(15)(d) of the Annex to the Agreement represent a compromise on this issue. Those provisions combine the six-member developing State category with the developing States elected on the basis of ensuring overall equitable geographic distribution to serve as a chamber for voting purposes. This would allow 11 developing States acting in concert to block a decision, compared to the 13 votes needed to block an overall two-thirds majority in the Council.

Composition of the Council. Article 160(12)(a) of the Convention authorizes the Assembly to elect the members of the Council. Section 3(10) of the Annex to the Agreement refines this by providing for all States Parties that meet the criteria of a specific category (i.e., consumers, investors and producers) to nominate their representatives in those categories. This refinement ensures that each category of States Parties will be represented in the Council by members of its own choosing.

Rulemaking: *General.* Article 160(f)(ii) authorizes the Assembly to approve rules, regulations and procedures of the Authority governing the administration of the sea-bed mining regime that have been adopted by the Council. Article 162(2)(o)(ii) provides that the Council shall adopt and provisionally apply such rules, regulations and procedures pending their approval by the Assembly. As noted above, the Council decision to adopt and provisionally apply rules, regulations and procedures must be taken by consensus. The result is that no implementing rules can be adopted or applied without the consent of the United States.

Section 3(4) of the Annex to the Agreement further protects U.S. interests by requiring that decisions of the Assembly on any matter for which the Council also has competence, or any administrative, budgetary or financial matter, must be based on recommendations of the Council. If the Assembly disagrees with the Council, it must send the recommendations back for further consideration in light of the views of the Assembly. In the meantime, rules adopted by the Council continue to apply provisionally pending their final approval by the Assembly.

Commercial Exploitation Rules. As noted above, the Agreement sets forth general market-oriented principles to provide the basis for future rulemaking when commercial production appears likely. The Agreement provides a special procedure for adopting such rules to create effective incentives for their development in a timely fashion so that delay in their adoption would not impede commercial operations.

Section 1(15) of the Annex to the Agreement sets forth two means by which the process of preparing the necessary rules can be initiated. Paragraph 15(a) provides that the Council can initiate the process 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. Paragraph 15(b) requires the Council to complete its work on the rules within two years of receiving such a request. Paragraph 15(c) provides that, if such work is not completed within this timeframe and an application for approval of a plan of work for exploitation is pending, the Council must consider and provisionally approve the proposed plan of work based on the Convention and any rules adopted provisionally, as well as the principle of non-discrimination.

Review Conference. The United States and other industrialized States strongly objected to the Review Conference provided for in article 155 of the Convention. The Review Conference would have convened 15 years after the commencement of commercial production to reevaluate Part XI and to propose amendments to the Convention. Such amendments could have entered into force for all States if adopted and ratified by three-quarters of the States Parties. This would have allowed the possibility that the United States could be bound by amendments that it had opposed.

Section 4 of the Annex to the Agreement eliminates the Review Conference. Any reconsideration of the sea-bed mining regime is subject to the normal procedures for adopting amendments to the sea-bed mining provisions of the Convention contained in articles 314-316. Article 314 requires that amendments to the sea-bed mining regime be adopted by the Assembly and the Council of the Authority. Article 161(8)(d) requires that amendments be adopted in the Council by consensus, thus ensuring the United States a permanent veto over amendments. Amendments to the sea-bed mining regime adopted by this procedure enter into force when ratified by three-quarters of the States Parties (article 316(5)).

Economic and Commercial Policy Concerns

As discussed above, the United States and other industrialized States objected to many features of Part XI on economic and commercial policy grounds. The United States objected, for example, to the provisions of Part XI on production limitations, financial terms of contracts, technology transfer and the Enterprise because of the negative effect they would have had on commercial exploitation of sea-bed mineral resources.

While there developed a general willingness on the part of other States to meet these objections, the effort to reform Part XI had to address the difficulty of predicting when interest in commercial exploitation will reemerge, which specific resources will be of interest at that time, and what economic environment will prevail. The Agreement resolves these difficulties by adopting general principles designed to restructure the sea-bed mining regime along free market lines. The States Parties will implement these general principles through the Authority as the need arises, in accordance with the new decision-making rules discussed above.

The Agreement also contains specific provisions to meet certain specific objections. The substantive solutions to the individual issues of concern are next discussed.

Production Limitations. Article 151 of the Convention would have established an elaborate system of controls on production of minerals from the deep sea-bed, ostensibly to protect land-based producers of minerals from adverse impacts due to competition from deep sea-bed mining. The controls were based on a formula for estimating the growth in the demand for minerals and then limiting sea-bed mining to a percentage of that growth, by requiring miners to obtain production authorizations from the Authority. In addition, article 151 would have allowed the Authority to participate in commodity organizations with the objective of promoting growth, efficiency and stability of markets. This could have included commodity agreements with production controls, quotas or other economic provisions for intervening in commodity markets.

In response to the objections of the United States and other industrialized States, section 6 of the Annex to the Agreement eliminates all such provisions. In their place, section 6(1) bases the production policy of the Authority on sound commercial principles. It provides that the provisions of the General Agreement on Tariffs and Trade (or agreements that replace the GATT) will apply to sea-bed mining beyond national jurisdiction. In particular, there can be no subsidization of sea-bed mining beyond national jurisdiction that would not be permitted under GATT rules, and no discrimination between minerals produced from the deep sea-bed and minerals produced from other sources.

Disputes arising from allegations that a State Party is not complying with the relevant GATT provisions would be subject to GATT dispute settlement procedures where both States Parties are party to the relevant GATT arrangements. If one or more parties to the dispute are not party to the relevant GATT arrangements, disputes would be referred to the dispute settlement procedures under the Convention (see discussion of dispute settlement below).

The transition to the World Trade Organization from the present GATT may require clarification of these provisions. For example, issues may arise concerning which agreement applies when some States Parties to the Convention remain party to the former GATT arrangements and others become party to the new arrangements. However, with the timing of the reemergence of interest in commercial production from the deep sea-bed uncertain, it is possible that the question will resolve itself before issues arise in this context.

Economic Assistance. In negotiating the Agreement, land-based producers of minerals that are found on the sea-bed agreed to eliminate production controls in exchange for the establishment of an economic assistance fund.

Article 151(10) of the Convention empowers the Authority to establish a "system of compensation or take other measures of economic adjustment assistance" with the objective 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 deep sea-bed mining.

Section 7 of the Annex to the Agreement contemplates that this provision will be implemented through the establishment of an economic assistance fund. However, such a fund may only be established when the revenues of the Authority exceed those necessary to cover its administrative expenses (i.e., when revenues from mining are sufficient to avoid the need for assessed contributions from members for administrative expenses and a surplus exists). Only revenues from mining and voluntary contributions may be used to finance the fund. The United States veto in the Finance Committee and its influence in the Council are adequate to insure that such a fund is not established or operated in a manner contrary to U.S. interests.

Financial Terms of Contracts. Article 13 of Annex III to the Convention established detailed financial arrangements that were to become part of the contracts between the

Authority and the miner and that would have served as the means for the Authority to recover economic rents from the development of mineral resources of the sea-bed beyond national jurisdiction.

Among these arrangements were a U.S.$1,000,000 annual fee from the date of approval of a plan of work for exploration. Upon the commencement of commercial production, the miner would have had to elect between the payment of a production charge or a combination of a production charge and a share of net proceeds from mining. The rates of both were graduated, starting out lower in the early years and increasing in the latter years of production, and were also adjustable, based on profitability.

These arrangements were extremely complex and relied upon very specific assumptions about the nature and profitability of a sea-bed mining operation based on a specific economic model. The United States and other industrialized States objected that these arrangements were both excessive and unduly rigid, given the uncertainties regarding the timing and nature of future mining activities. In particular, the United States objected to charging a U.S.$1,000,000 annual fee during the exploration stage, when miners would have no income stream.

In response to these objections, section 8 of the Annex to the Agreement dispenses with these detailed provisions and provides that a system of financial arrangements shall be established in the future based on certain basic principles. Specifically, it requires that the system be fair to the Authority and the miner, that the rates be comparable to those prevailing with respect to land-based mining to avoid competitive advantages or disadvantages, that the system not be complicated and not impose major administrative costs on the Authority or the miner, and that consideration be given to a royalty or a combination royalty and profit-sharing system.

The U.S.$1,000,000 annual fee charged during the exploration stage is eliminated. The Council will fix the amount of an annual fee during commercial production, which can be credited against payments due under the royalty or profit sharing arrangements. Thus, the effect is to establish a minimum annual fee during commercial production.

Technology Transfer. The United States and other industrialized countries objected to the mandatory technology transfer provisions contained in article 5 of Annex III to the Convention. These provisions mandated the inclusion in the miners' contract of an undertaking on the part of the miner to transfer sea-bed mining technology to the Enterprise or developing countries if they were unable to obtain the technology on the open market. If transfer were not assured, the miner could not use such technology in its own mining activities.

Section 5 of the Annex to the Agreement eliminates these compulsory transfer provisions. In very general terms, article 144 of the Convention encourages the promotion of the transfer of technology and scientific knowledge related to deep sea-bed mining, including programs to facilitate access under fair and reasonable terms and conditions and to promote training. Section 5 of the Annex to the Agreement provides that the Enterprise and developing countries wishing to acquire sea-bed mining technology should do so on the open market or through joint ventures. If they are unsuccessful in obtaining such technology, the Authority may request miners and their sponsoring States to cooperate with it in facilitating access to technology "on fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights."

The Enterprise: *Background.* Article 170 of the Convention establishes an operating arm of the Authority called the Enterprise. Article 153(2)(a) provides that the Enterprise, as well as other commercial enterprises, may apply to the Authority for mining rights.

The origins of the Enterprise date back to the early days of the Third United Nations Conference on the Law of the Sea, when certain developing States sought a regime where all mining would be conducted directly by the Authority, with private miners relegated to the role of service contractors. Industrialized States favored a system of mining by States and private companies licensed by the Authority. In 1976, Secretary of State Henry Kissinger proposed the compromise that came to be known as the "parallel system" in which the Authority, through the Enterprise, as well as States and private companies, would both engage in mining activities. However, the negotiations that followed left the Enterprise in a privileged position that could have made it difficult for private entities to compete.

Throughout the effort to reform Part XI, the United States sought to eliminate the Enterprise by pointing to the privatization programs underway in many parts of the world. Nevertheless, among many developing States, in particular the least developed countries, where economic reform had not yet begun to take root, strong resistance persisted. Largely because the Enterprise symbolized the aspirations of developing States to have a means to participate in sea-bed mining, retention of the Enterprise remained a bedrock position of the developing States as a whole.

The Agreement retains the Enterprise but renders it harmless by addressing the specific problems and ensuring that the Enterprise could only become operational following a decision by the Council, and only if the Council concludes that the operations of the Enterprise would conform to sound commercial principles.

Problems. The three main problems posed by the Enterprise were that its first operation would be financed by loans and loan guarantees from the industrialized States, that it would benefit from numerous provisions discriminating in its favor vis-a-vis other commercial entities, and that other commercial entities would be obliged to provide it with technology (discussed above).

Solutions. Responding to these concerns, section 2(2) of the Annex to the Agreement provides that the Enterprise will conduct its first operations through joint ventures with other commercial enterprises. Section 2(3) eliminates the obligation for States

Parties to finance its operations. Section 2(4) subjects the Enterprise to the same obligations as other miners and modifies article 153(3) of the Convention to ensure that any plan of work submitted by the Enterprise must be in the form of a contract like that of any other miner and thus be subject to the requirements applicable to any other contractor. Finally, section 5 of the Annex to the Agreement removes the compulsory technology transfer provisions.

Council Decision. Section 2(2) of the Annex to the Agreement contains one of the most significant limitations on the Enterprise by preventing the Enterprise from operating as an independent entity until the Council issues a directive to that effect. In the interim, the secretariat of the Authority, subject to the control of the Council, will perform any necessary functions to prepare for the possible future operation of the Enterprise.

The Council must take up the issue of the independent operation of the Enterprise when an application by another commercial entity is approved for commercial exploitation, or when a proposal is made by another commercial entity to form a joint venture with the Enterprise. The decision by the Council must be based on a conclusion that operations by the Enterprise would accord with sound commercial principles. If such a decision were ever made, the Enterprise would then have to proceed through the normal process of applying for mining rights.

The enhanced role of the United States and other industrialized countries in the Council will allow them to ensure that, if a decision is ever made to make the Enterprise operational, it will only be on a basis that the United States would find acceptable. For example, if sea-bed mining ever generates sufficient funds through royalties to service the budget of the Authority and still leave a surplus, the Authority might decide to use some of the funds to invest in a joint venture with other commercial entities. It is possible that such an equity position in a sea-bed mining operation could be structured so as to pose no serious problems from the standpoint of United States interests. It is equally possible that, by the time commercial mining takes place, developing States as well as industrialized countries will recognize the Enterprise as a relic of the past and not seek to make it operational.

Budget of the Authority. Article 173 of the Convention provides that the administrative budget of the Authority will be met by assessed contributions made by States Parties to the Convention until the time that other funds (i.e., revenues from mining or voluntary contributions) are adequate to meet the administrative expenses of the Authority. Section 1(14) of the Annex to the Agreement modifies these provisions by requiring that, until the Agreement enters into force, the administrative expenses of the Authority will be met through the budget of the United Nations.

The decision to draw on the United Nations budget was based on the need to provide for provisional application of the Agreement prior to its entry into force (see below), in order to allow States that had not yet become party to the Convention, such as the United States, to participate in the Authority. States that had already ratified or acceded to the Convention insisted that those States which participated in the Authority only through their provisional application of the Agreement should also support the budget. Temporary funding through the United Nations provided a convenient means to accomplish this.

At the last session of the Prepcom (August 1994), the United States achieved a budget recommendation to the United Nations General Assembly that was approximately 30 percent lower than Secretariat estimates for 1995. It assumes a staff for the Authority of six professionals and 17 support personnel. The total budget is estimated at $2,489,600 and will not necessitate an increase in the overall United Nations budget for the 1994-95 biennium, as it will largely be offset by savings from the discontinuation of activities in support of the Prepcom.

Privileges and Immunities

Articles 177-183 of the Convention, as well as article 13 of Annex IV to the Convention, require States Parties to provide certain privileges and immunities to the Authority and to certain persons connected to the Authority. In the near term, due to the limited interest in deep sea-bed mining and the attendant need for only low-level activity by the Authority, the foreseeable activities of the Authority that may occur in the United States which would implicate these privileges and immunities will take place at United Nations Headquarters in New York, where representatives of the Authority's member States and members of the Authority's secretariat may travel for meetings.

With respect to such activities, the United States is already obligated to provide all relevant privileges and immunities pursuant to existing agreements in force for the United States, including the Agreement between the United Nations and the United States regarding the headquarters of the United Nations, as amended (TIAS 1676, 5961, 6176, 6750, 9955; 61 Stat(4) 3416; 17 UST 74, 17 UST 2319; 20 UST 2810, 32 UST 4414; 11 UNTS 11, 554 UNTS 308, 581 UNTS 362; 687 UNTS 408) and the Convention on the Privileges and Immunities of the United Nations (TIAS 6900; 21 UST 1418; 1 UNTS 16).

The Agreement and Its Relationship to the Convention

The Agreement revises, in a legally binding manner, the objectionable provisions of Part XI. As discussed above, these revisions satisfactorily address the objections raised by the United States and other industrialized countries to Part XI.

The Agreement contains two parts, a main body and an Annex. All of the substantive revisions to Part XI appear in the Annex, while the main body of the Agreement establishes the legal relationship between the Convention and the Agreement, provides options by which States may consent to be bound

by the Agreement, and sets forth the terms of entry into force of the Agreement and of its provisional application, and addresses certain subsidiary issues.

Article 1 of the Agreement obligates States Parties to undertake to implement Part XI in accordance with the Agreement. Article 2 states that the provisions of the Convention and those of the Agreement are to be interpreted and applied together as one single instrument; in the event of any inconsistency, the provisions of the Agreement prevail. These articles make the original provisions of Part XI legally subject to those of the Agreement.

Under article 3, the Agreement became open for signature by States and certain other entities (including the European Union) during a twelve-month period beginning on the date on which the United Nations General Assembly adopted the Agreement, i.e., July 28, 1994. Article 4(1) and (2) seek to ensure that States may thereafter only become party to the Agreement and the Convention together.

Article 4(3) allows States to choose among several alternative procedures by which to express their consent to be bound by the Agreement. The United States signed the Agreement subject to ratification, pursuant to article 4(3)(b).

Article 4(3)(c), together with article 5, provide another mechanism by which those States that have already ratified or acceded to the Convention (a category that does not include the United States) may become party to the Agreement. Any such State may sign the Agreement and become party to it without further action unless that State otherwise notifies the Depositary within twelve months of the Agreement's adoption. In the event of such notification, the notifying State is eligible to accede to the Agreement under article 4(3)(d).

This simplified procedure resolved an overarching difficulty in the effort to revise Part XI. During negotiation of the Agreement, those States, including the United States, that *had not* ratified the Convention because of objections to Part XI insisted on the need for a legally binding instrument to revise Part XI. Many of those States that *had* ratified the Convention insisted that they would not return to their parliaments and seek formal approval of a new instrument that would revise Part XI.

The simplified procedure satisfies both objectives in a legally sound manner. Under customary international law, as reflected in article 12(1)(a) of the Vienna Convention on the Law of Treaties (92nd Congress, 1st Session, Senate Executive "L"), "the consent of a State to be bound by a treaty is expressed by signature of its representative when . . . the treaty provides that signature should have that effect." In the case of the Agreement, article 4(3)(c) and article 5 provide that, for any State that has ratified or acceded to the Convention, signature of the Agreement will bind the signatory State to the Agreement 12 months after the Agreement's adoption, unless that State notifies the Depositary otherwise.

One distinct advantage of the simplified procedure is that it allows a large number of States that have already ratified or acceded to the Convention easily to become party to the Agreement as well, thereby reducing the possibility that some States will remain party only to the Convention.

Article 6 governs entry into force of the Agreement. By its terms, the Agreement will enter into force 30 days after the date on which 40 States have established their consent to be bound by it, provided that at least seven of those States meet the criteria established for pioneer investors in deep sea-bed mining set forth in Resolution II of the Third United Nations Conference on the Law of the Sea and that, of those seven States, five are developed States. The United States is a pioneer investor in deep sea-bed mining for these purposes.

Article 7 provides for provisional application of the Agreement pending its entry into force. If the Agreement does not enter into force by November 16, 1998, due to the failure of the requisite States with mining interests to adhere to it, provisional application must terminate.

Provisional application advances important U.S. objectives. Without provisional application of the Agreement, the Convention would enter into force on November 16, 1994 unrevised; i.e., the provisions of the Agreement that resolve the objectionable features of Part XI would not be effective. The Authority would begin to function under the terms of the Convention, unaffected by the remedial provisions introduced by the Agreement.

Provisional application also provides a means to give effect to the remedial provisions of the Agreement without using the cumbersome amendment procedures contained in the Convention itself. Those amendment procedures would at the very least substantially delay the entry into force of those provisions and could prevent them from *ever* coming into force.

By virtue of its signature of the Agreement, the United States agreed to apply the Agreement provisionally beginning November 16, 1994. Article 7(2) provides flexibility in allowing States to apply it provisionally "in accordance with their national or internal laws and regulations." This approach, which is similar to that taken in other international agreements that have been provisionally applied, ensures that existing legislation provides sufficient authority to implement likely U.S. obligations during the period of provisional application.

By provisionally applying the Agreement, the United States can promote its sea-bed mining interests by participating in the very first meetings of the Authority, at which critical decisions are likely to be taken. As discussed above, the Agreement gives the United States considerable influence over the decisions of the Authority, which would be lost if the United States did not participate from the outset.

Provisional application of the Agreement is consistent with international and U.S. law. Article 25 of the Vienna Convention on the Law of Treaties provides for the provisional application of agreements pending their entry into force. Substantial

State practice has developed in this regard; a growing list of international agreements have been provisionally applied.

The United States has provisionally applied numerous agreements, including several international commodity agreements and other treaties pending their entry into force for the United States.

Articles 8 through 10 of the Agreement address subsidiary issues relating to the application of the Agreement.

United States Deep Sea-bed Mining Legislation

The DSHMRA constitutes the national licensing and permitting regime for U.S. entities engaged in deep sea-bed mining activities.

The basic premise of the DSHMRA is that the interests of the United States would best be served by U.S. participation in a widely acceptable treaty governing the full range of ocean uses, including establishment of an international regime for development of mineral resources of the sea-bed beyond national jurisdiction. Recognizing in 1980 that an acceptable international regime had not been achieved, Congress enacted the DSHMRA both to provide a legal framework within which U.S. entities could continue deep sea-bed mining activities during the interim period pending an acceptable treaty (and environmental protection concerns could be addressed), and to facilitate a smooth transition from this national regime to the future international regime established by such a treaty.

Anticipating the components of an acceptable international regime, Congress incorporated into the DSHMRA basic elements that are similar to those now found in Part XI as modified by the Agreement. These include:

- Recognition of U.S. support for the principle that the deep sea-bed mineral resources are the common heritage of mankind (30 U.S.C. § 1401(a)(7));
- A disclaimer of sovereignty over areas or resources of the deep sea-bed (30 U.S.C. § 1402(a));
- Recognition of the likelihood of payments to an international organization with respect to hard mineral resources (30 U.S.C. § 1402(a)(15));
- Provision of measures for protection of the marine environment, including an environmental impact statement and monitoring (e.g., 30 U.S.C. § 1419(a) and (f)); and
- Establishment of a regime based on a first-in-time priority of right, on objective, nondiscriminatory criteria and regulations, and on security of tenure through granting of exclusive rights for a fixed time period and with limitations on the ability to modify authorization obligations.

In addition to these basic elements, Subchapter II of the DSHMRA sets forth criteria that would need to be met for an international regime to be acceptable to the United States, namely, assured and nondiscriminatory access for U.S. citizens, under reasonable terms and conditions, to deep sea-bed resources, and assured continuity in mining activities undertaken by U.S. citizens prior to entry into force of the agreement under terms, conditions, and restrictions that do not impose significant new economic burdens that have the effect of preventing continuation of operations on a viable economic basis (30 U.S.C. § 401(1)). The DSHMRA also recognizes that a treaty must be judged by the totality of its provisions (30 U.S.C. § 1441(2)).

As described above, the Agreement clearly revises Part XI in a manner that satisfies these criteria. Of particular importance in this context are the elimination of production controls, mandatory technology transfer by operators, the annual U.S.$1,000,000 fee during exploration and the onerous economic rent provisions of Part XI; the provision to U.S. entities of non-discriminatory access to deep sea-bed mineral resources on terms no less favorable than those provided for registered pioneer investors; the limitations on contract modifications; the restraints imposed on the operation of the Enterprise; and the revisions to the decision-making provisions of Part XI that will allow the United States to protect its interests and those of U.S. citizens.

Provisional application of the Agreement, discussed above, advances a central policy reflected in the DSHMRA of providing for a smooth transition and continuity of activity between the regime established in the DSHMRA and an acceptable international regime established by treaty. For the reasons set forth above, provisional application provides the only workable transition to the new treaty regime.

The DSHMRA seeks to ensure that the transition to an international regime does not result in premature termination of on-going commercial recovery operations by U.S. citizens. In fact, no commercial sea-bed mining is currently being conducted by U.S. citizens or by those of other nations, nor is such activity anticipated in the near future.

Under these circumstances, and in view of article 7(2) of the Agreement (providing for provisional application in accordance with national or internal laws or regulations), amendments to the DSHMRA will not be necessary during the provisional application period. International agreements regarding mutual respect of claims in force with nations of other pioneer investors will also remain in force during this period. As implementation of the international regime proceeds, the Administration will consult with Congress regarding the need for additional legislation prior to entry into force of the Convention and the Agreement for the United States.

MARINE SCIENTIFIC RESEARCH (Articles 40, 87, 143, 147; Part XIII, Articles 238-265; Final Act, Annex VI)

The Convention recognizes the essential role of marine scientific research in understanding oceanic and related atmospheric processes and in informed decision-making about ocean uses and coastal waters. Part XIII affirms the right of all States to conduct marine scientific research and sets forth obligations to promote and cooperate in such research. The Convention encourages publication or dissemination of the data and information resulting from

marine scientific research, consistent with the general U.S. policy of advocating the free and full disclosure of the results of scientific research.

Part XIII confirms the rights of coastal States to require consent for marine scientific research undertaken in marine areas under their jurisdiction. These rights are balanced by specific criteria to ensure that the consent authority is exercised in predictable and reasonable fashion so as to promote maximum access for research activities.

The United States is a leader in the conduct of marine scientific research and has consistently promoted maximum freedom for such research. The framework offered by the Convention offers the best means of pursuing this objective, while recognizing extended coastal State resource jurisdiction. Although the United State does not exercise the option of requiring consent for marine scientific research in the U.S. EEZ, the Convention's procedures and criteria for obtaining coastal State consent to conduct marine scientific research in areas under national jurisdiction provide a sound basis for ensuring access by U.S. scientists to such areas.

The term "marine scientific research," while not defined in the Convention, generally refers to those activities undertaken in the ocean and coastal waters to expand knowledge of the marine environment and its processes. It is distinguished from hydrographic survey, from military activities, including military surveys, and from prospecting and exploration.

General Provisions (Section 1, Articles 238-241)

Part XIII sets forth principles governing the conduct of marine scientific research, proceeding from the right set forth in article 238 of all States (irrespective of their geographic location), as well as competent international organizations, to conduct marine scientific research in accordance with the terms of the Convention. Article 239 further calls upon States and competent international organizations to promote and facilitate such research.

Article 240 requires marine scientific research to be conducted exclusively for peaceful purposes. (See discussion below regarding article 301.) It is to be carried out with appropriate scientific methods and means, compatible with the Convention; it is not to interfere unjustifiably with other legitimate uses of the sea compatible with the Convention; it is to be duly respected in the course of such other uses; and it is to be conducted in compliance with all relevant regulations adopted in conformity with the Convention, including those for the protection and preservation of the marine environment.

Article 241 provides that marine scientific research is not to constitute the legal basis for any claim to any part of the marine environment or its resources. This provision parallels similar provisions in articles 89 and 137(1) and (3) on the high seas and the Area, respectively.

International Cooperation (Section 2, Articles 242-244)

Articles 242 and 243 elaborate upon the obligation of States and competent international organizations to promote international cooperation in marine scientific research and to cooperate, through conclusion of bilateral and multilateral agreements, in creating favorable conditions for the conduct of research and in integrating the efforts of scientists in studying marine phenomena and processes and their interrelationships.

Article 244 further obligates States and competent international organizations to make available by publication and dissemination through appropriate channels information on proposed major research programs, as well as knowledge resulting from marine scientific research. To this end, States and competent international organizations are called upon to promote actively the flow of data and information resulting from marine scientific research. Likewise, the capabilities of developing countries to carry out marine scientific research are to be promoted.

The Intergovernmental Oceanographic Commission (IOC) plays a leading role in marine scientific research programs, particularly in cooperative undertakings with other United Nations agencies and with other governmental and non-governmental organizations.

Conduct and Promotion of Marine Scientific Research (Section 3, Articles 245-257)

The Convention sets forth the rights and obligations of States and competent international organizations with respect to the conduct of marine scientific research in different areas.

Territorial Sea. Article 245 recognizes the unqualified right of coastal States to regulate, authorize and conduct marine scientific research in the territorial sea. Therefore, access to the territorial sea, and the conditions under which a research project can be conducted there, are under the exclusive control of the coastal State (see also articles 21(1)(g), 19(2)(j)), 40 and 54).

EEZ and Continental Shelf. Under article 246, coastal States have the right to regulate, authorize and conduct marine scientific research in the EEZ and on the continental shelf. Access by other States or competent international organizations to the EEZ or continental shelf for a marine scientific research project is subject to the consent of the coastal State. The consent requirement, however, is to be exercised in accordance with certain standards and qualifications.

In normal circumstances, the coastal State is under the obligation to grant consent. (It is explicitly provided that circumstances may be normal despite the absence of diplomatic relations.) The coastal State, nevertheless, has the discretion to withhold its consent if the research project is of direct significance for the exploration and exploitation of living or non-living resources; involves drilling, the use of explosives or introduction of harmful substances into the marine environment; or involves the construction, operation and use of artificial islands, installations or

structures. (The first of these grounds for withholding consent may be used on the continental shelf beyond 200 miles only in areas specially designated as under development.) It may also withhold consent if the sponsor of the research has not provided accurate information about the project or has outstanding obligations in respect of past projects.

The consent of a coastal State for a research project may be granted either explicitly or implicitly. Article 248 requires States or organizations sponsoring projects to provide to the coastal State, at least six months in advance of the expected starting date of the research activities, a full description of the project. The research activities may be initiated six months after the request for consent, unless the coastal State, within four months, has informed the State or organization sponsoring the research that it is denying consent for one of the reasons set forth in article 246 or that it requires more information about the project. If the coastal State fails to respond to the request for consent within four months following notification, consent may be presumed to have been granted (article 252). This provision should encourage timely responses from coastal States to requests for consent.

Consent may also be presumed under article 247 to have been granted by a coastal State for a research project in its EEZ or on its continental shelf undertaken by a competent international organization of which it is a member, if it approved the project at the time that the organization decided to undertake the project and it has not expressed any objection within four months of the notification of the project by the organization.

Article 249 sets forth specific conditions with which a State or competent international organization sponsoring research in the EEZ or on the continental shelf of a coastal State must comply. These include the right of the coastal State to participate in the project, in particular through inclusion of scientists on board research vessels; provision to the coastal State of reports and access to data and samples; assistance to the coastal State, if requested, in assessing and interpreting data and results; and ensuring that results are made internationally available as soon as practicable. Additional conditions may be established by the coastal State with respect to a project falling into a category of research activities over which the coastal State has discretion to withhold consent pursuant to article 246.

If a State or competent international organization sponsoring research in the EEZ or on the continental shelf of a coastal State fails to comply with such conditions, or if the research is not being conducted in accordance with the information initially supplied to the coastal State, article 253 authorizes the coastal State to require suspension of the research activities. If those carrying out the research do not comply within a reasonable period of time, or if the non-compliance constitutes a major change in the research, the coastal State may require its cessation.

The High Seas and the Area. Article 87 expressly recognizes conduct of marine scientific research as a freedom of the high seas. Articles 256 and 257 further clarify that marine scientific research may be conducted freely by any State or competent international organization in the water column beyond the limits of the EEZ, as well as in the Area, i.e., the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction. Under article 143, research in the Area is to be carried out exclusively for peaceful purposes. (See discussion of article 301 below.)

Research Installations and Equipment (Section 4, Articles 258-262)

The conditions applicable to marine scientific research set forth in the Convention apply equally to the deployment and use of installations and equipment to support such research (article 258). Such installations and equipment do not possess the status of islands, though safety zones of a reasonable breadth (not exceeding 500 meters) may be created around them, consistent with the Convention. They may not be deployed in such fashion as to constitute an obstacle to established international shipping routes. They must bear identification markings indicating the State of registry or the international organization to which they belong, and have adequate internationally agreed warning signals (articles 259-262).

Responsibility and Liability (Section 5, Article 263)

Pursuant to article 263(1), States and competent international organizations shall be responsible for ensuring that marine scientific research, whether undertaken by them or on their behalf, is conducted in accordance with the Convention. Pursuant to article 263(2), States and organizations shall be responsible and liable for any measures they take in contravention of the Convention in respect of research by other States, their natural or juridical persons or by competent international organizations and shall provide compensation for damage resulting from such measures. With respect to damage caused by pollution of the marine environment arising out of marine scientific research undertaken by or on the behalf of States and competent international organizations, such States or organizations shall be liable pursuant to article 235 (discussed above in connection with Part XII of the Convention.)

Settlement of Disputes (Section 6, Articles 264-265)

The application of the dispute settlement provisions of the Convention to marine scientific research is discussed below in the section on dispute settlement.

DISPUTE SETTLEMENT (Part XV, Articles 279-299; Annexes V-VIII)

The Convention establishes a dispute settlement system to promote compliance with its provisions and ensure that disputes are settled by peaceful means. The system applies to disputes between States and, with respect to deep sea-bed mining, to disputes

between States or miners and the Authority. The dispute settlement procedures of the Convention are:

- Flexible, in that Parties have options as to the appropriate means and fora for resolution of their disputes;
- Comprehensive, in that the bulk of the Convention's provisions can be enforced through binding mechanisms; and
- Accommodating of matters of vital national concern, in that they exclude certain sensitive categories of disputes (e.g., disputes involving EEZ fisheries management) from binding dispute settlement; they also permit a State Party to elect to exclude other such categories of disputes (e.g., disputes involving military activities) from binding dispute settlement.

The dispute settlement system of the Convention advances the U.S. policy objective of applying the rule of law to all uses of the oceans. As a State Party, the United States could enforce its rights and preserve its prerogatives through dispute settlement under the Convention, as well as promote compliance with the Convention by other States Parties. At the same time, the procedures would not require the United States to submit to binding dispute settlement matters such as military activities or the right to manage fishery resources within the U.S. EEZ.

General Provisions (Articles 279-285)

Section 1 contains general provisions concerning the settlement of disputes under the Convention. Article 279 obligates the parties to a dispute concerning the interpretation or application of the Convention to settle the dispute by peaceful means in accordance with the United Nations Charter. Articles 280 to 282 elaborate the right of States to agree on alternative means for settling their disputes. Article 284 provides for optional conciliation in accordance with the procedure set forth in Annex V, section 1, or any other conciliation procedure chosen by the parties to the dispute.

Compulsory, Binding Dispute Settlement (Articles 286-296)

Section 2 addresses compulsory dispute settlement procedures entailing binding decisions. Except as otherwise provided in section 3, if no settlement has been reached under section 1, section 2 of Part XV provides for disputes concerning the interpretation or application of the Convention to be submitted, at the request of any party to the dispute, to the court or tribunal having jurisdiction under this section.

Section 2 (article 287(1)) identifies four potential fora for compulsory, binding dispute settlement:

- The International Tribunal for the Law of the Sea constituted under Annex VI;
- The International Court of Justice;
- An arbitral tribunal constituted in accordance with Annex VII; and
- A special arbitral tribunal constituted in accordance with Annex VIII for specified categories of disputes.

A State, when signing, ratifying, or acceding to the Convention, or at any time thereafter, is able to choose, by written declaration, one or more of these means for the settlement of disputes under the Convention.

If the parties to a dispute have not accepted the same procedure for settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree (article 287(5)). If a State Party has failed to announce its choice of forum, it shall be deemed to have accepted arbitration in accordance with Annex VII.

As stated in the Secretary of State's report to the President, it is recommended that the United States make the following declaration:

> The Government of the United States of America declares, in accordance with article 287(1), that it chooses the following means for the settlement of disputes concerning the interpretation or application of the Convention:
>
> (A) a special arbitral tribunal constituted in accordance with Annex VIII for the settlement of disputes concerning the interpretation or application of the articles of the Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping; and
>
> (B) an arbitral tribunal constituted in accordance with Annex VII for the settlement of disputes not covered by the declaration in (A) above.

Choice of forum does not affect the jurisdiction of the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea, as provided for in Part XI (see below).

Article 290 authorizes a competent court or tribunal, which considers that *prima facie* it has jurisdiction, to prescribe appropriate provisional measures to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision. The term "marine environment," as used in the Convention, includes "marine life," so that a competent court or tribunal may prescribe provisional conservation measures for living marine resources under this authority whether or not such measures are necessary to protect the respective rights of the parties.

Article 292 provides specifically for expedited dispute settlement to address allegations that a State Party has not complied with the Convention's provisions for the prompt release of a vessel flying the flag of another State Party and its crew.

Article 293 provides for a court or tribunal having jurisdiction under section 2 to apply the Convention and other rules of international law not incompatible with the Convention.

Any decision rendered by a court or tribunal having jurisdiction under section 2 is final and is to be complied with by all the parties to the dispute; however, the decision has no binding force except between the parties and in respect of that particular dispute (article 296).

Limitations on Compulsory, Binding Dispute Settlement (Articles 297-299)

Section 3 provides for limitations on, and optional exceptions to, the applicability of compulsory, binding dispute settlement under section 2.

Limitations. Disputes concerning the exercise by a coastal State of its sovereign rights or jurisdiction are subject to compulsory, binding dispute settlement under section 2 only in certain cases (article 297(1)). These cases involve allegations that:

- A coastal State has acted in contravention of the provisions of the 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;
- A State, in exercising such rights and freedoms, has violated the Convention or certain laws and regulations adopted by a coastal State; and
- A coastal State has violated specified rules and standards for the protection of the marine environment.

Disputes concerning marine scientific research fall within the scope of compulsory, binding dispute settlement under section 2, with two exceptions (article 297(2)). The first exception involves the exercise by the coastal State of its explicit right or discretion to withhold consent (e.g., with respect to research directly related to resources or involving drilling). The second pertains to the coastal State's decision to exercise its right to suspend or cancel a research project for non-compliance with certain required conditions. There is provision, however, for disputes falling within such exceptions to be addressed through compulsory, nonbinding conciliation under Annex V, section 2.

Under article 297(3), fisheries disputes are subject to compulsory, binding dispute settlement under section 2, except that a coastal State need not submit to such settlement any dispute relating to its sovereign rights with respect to the living resources in its EEZ, or the exercise thereof, including, for example, its discretionary powers for determining the allowable catch. However, such disputes may, under certain conditions, be referred to compulsory, nonbinding conciliation under Annex V, section 2. Conciliation may be invoked if it is alleged that 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;
- 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
- Arbitrarily refused to allocate to any State, under articles 62, 69 and 70 and under terms and conditions established by the coastal State consistent with this Convention, the whole or part of the surplus it has declared to exist.

Optional Exceptions. Article 298 provides for a State to opt out of one or more of the dispute settlement procedures in section 2 with respect to one or more enumerated categories of disputes. These include:

- Maritime boundary disputes (to which compulsory, nonbinding conciliation may apply under certain conditions);
- Disputes concerning military activities and certain law enforcement activities; and
- Disputes in respect of which the UN Security Council is exercising the functions assigned to it by the United Nations Charter.

As stated in the Secretary of State's report to the President, it is recommended that the United States invoke all three of these exceptions and, thus, that the United States make the following declaration:

> The Government of the United States of America declares, in accordance with paragraph 1 of article 298, that it does not accept the procedures provided for in section 2 of Part XV with respect to the categories of disputes set forth in subparagraphs (a), (b) and (c) of that paragraph.

Particular Regime For Deep Sea-bed Mining

The Convention contains provisions that apply specifically to disputes relating to deep sea-bed mining. Unlike other disputes arising under the Convention, deep sea-bed mining disputes may be brought before the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea, established by article 14 and section 4 of Annex VI to the Convention.

Article 187 gives the Sea-Bed Disputes Chamber jurisdiction, *inter alia*, over disputes:

1) Between States Parties regarding the interpretation or application of Part XI and its related annexes, as modified by the Agreement;
2) Between the Authority and States Parties regarding:

i) Acts or omissions of the Authority in contravention of the Convention or rules and regulations adopted pursuant thereto,
ii) An allegation of acts by the Authority in excess of its jurisdiction or a misuse its power, and
iii) Disapproval of a contract for exploration and exploitation rights;

3) Between the Authority and mining companies regarding:

i) The refusal to approve a plan of work or legal issues arising during the approval process, and
ii) The interpretation or application of a contract and activities undertaken pursuant to an approved plan of work.

In the case of disputes regarding the interpretation or application of a contract, or acts or omissions of a party to a contract, the mining companies have standing to initiate proceedings and need not rely on the sponsoring State. In addition, article 188 provides that such disputes shall be submitted to commercial arbitration at the request of any party to the dispute.

Article 189 provides that the Tribunal shall not substitute its discretion for that of the Authority. It also provides that the Tribunal shall not declare invalid any rules and regulations

adopted by the Authority, but shall confine itself to determinations of whether their application in specific cases is consistent with the Convention or with a contract, or whether the Authority has exceeded its jurisdiction or has misused its power.

Arbitration Under Annex VII

Annex VII sets forth detailed rules concerning the procedure governing arbitration under this Annex:

- The list of potential arbitrators is maintained by the Secretary-General of the United Nations; each Party may nominate up to four arbitrators to appear on the list.
- An arbitral panel generally consists of five members. Each party to the dispute appoints one member; the other three members are appointed by agreement between the parties. Annex VII provides a mechanism for appointments, should the parties be unable to agree on members; in general, the President of the International Tribunal for the Law of the Sea makes the necessary appointments.
- The arbitral tribunal determines its own procedure.
- Decisions of the tribunal are to be by majority vote.
- Arbitral awards are final and without appeal (unless otherwise agreed) and are to be complied with by the parties to the dispute.

Special Arbitration Under Annex VIII

Annex VIII contains somewhat different rules concerning the procedure governing arbitration of disputes concerning the interpretation or application of articles of the Convention relating to (1) fisheries; (2) protection and preservation of the marine environment; (3) marine scientific research; and (4) navigation, including pollution from vessels and by dumping:

- States Parties may nominate two experts in each of these fields, whose names shall appear on lists of experts to be established and maintained.
- A special arbitral panel generally consists of five members, preferably appointed from the relevant list. Each party to the dispute appoints two members; the other member is appointed by agreement between the parties. Annex VIII provides a mechanism for appointments, should the parties be unable to agree on a fifth member; in general, the Secretary-General of the United Nations is to make the necessary appointments.
- The provisions for arbitration under Annex VII shall otherwise apply.
- In addition, the parties to a dispute may agree to request the special arbitral tribunal to carry out an inquiry and establish the facts giving rise to the dispute and, if the parties further agree, to formulate recommendations which shall constitute a basis for review by the parties.

OTHER MATTERS

MARITIME BOUNDARY DELIMITATION (Articles 15-16, 74-75, 83-84)

Where the territorial seas, EEZs or continental shelves of States with opposite or adjacent coasts overlap, the Convention provides rules for the delimitation of those zones.

With respect to the territorial sea, delimitation is to be based on equidistance (i.e., a median line), unless historic title or other special circumstances call for a delimitation different from equidistance (article 15).

With respect to the EEZ and the continental shelf, articles 74 and 83 provide that delimitation of the EEZ and the continental shelf, respectively, are to be effected by agreement, on the basis of international law, in order to achieve an equitable solution.

Pending agreement on delimitation of the EEZ or the continental shelf, the States concerned are to 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 (articles 74(3) and 83(3)). Such arrangements are without prejudice to the final delimitation of the EEZ or the continental shelf (article 74(3)).

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

Implications for U.S. Maritime Boundaries. The United States has 28 maritime boundary situations with its neighbors. To date, 10 of them have been negotiated or adjudicated in whole or in part.

U.S. maritime boundary positions are fully consistent with the rules reflected in the Convention. These positions were determined through an interagency process in the late 1970s, prior to the U.S. extension of its maritime jurisdiction to 200 miles. As a result of that process, the United States determined that equidistance was the appropriate boundary in most cases, but that three situations required a boundary other than the equidistant line: with Canada in the Gulf of Maine/Georges Bank area; with the U.S.S.R. (now the Russian Federation) in the Bering and Chukchi Seas and North Pacific Ocean; and with the Bahamas north of the Straits of Florida. These positions were reflected in the outer limit of the U.S. EEZ, published in the Federal Register (November 4, 1976, March 7 and May 12, 1977, and January 11, 1978).

The Senate has given its advice and consent to ratification of boundary treaties related to the following areas: U.S.-Mexico (regarding the territorial sea boundary); U.S. (Puerto Rico and U.S. Virgin Islands)-Venezuela; U.S. (American Samoa)-Cook Islands; U.S. (American Samoa)-New Zealand (Tokelau); and U.S.-U.S.S.R. (now the Russian Federation). The Senate has before it, for its advice and consent, treaties establishing equidistant line boundaries with Cuba and Mexico. The Senate also has before it two recently concluded equidistant line treaties with the United Kingdom in respect of Puerto Rico and the U.S. Virgin Islands, and Anguilla and the British Virgin Islands. (Pending entry into force, the U.S.-Cuba boundary treaty is being applied provisionally pursuant to its terms, extended through biannual exchanges of notes. The U.S.-Mexico

boundary is being applied through an interim executive agreement. The U.S.-Russia treaty is being applied provisionally pending ratification by Russia.)

With respect to the U.S.-Canada maritime boundary in the Gulf of Maine, most of that boundary was determined through a 1984 award of a Chamber of the International Court of Justice. Regarding the United States and Japan, they have recorded an understanding that recognizes that the respective outer limits of their maritime jurisdiction coincide and constitute a line of delimitation.

In addition to the President's constitutional authority in this area, Congress has authorized the Secretary of State to negotiate with foreign States to establish the boundaries of the EEZ of the United States in relation to any such State (16 U.S.C. § 1822(d)) and called upon the President to establish procedures for settling any outstanding international boundary disputes regarding the outer continental shelf (43 U.S.C. § 1333(a)(2)(B)).

ENCLOSED OR SEMI-ENCLOSED SEAS (Part IX, Articles 122-123)

The Convention defines an enclosed or semi-enclosed sea as 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 122).

The Convention calls upon States bordering an enclosed or semi-enclosed sea to cooperate in carrying out their duties under the Convention, but gives such States no greater or lesser rights vis-a-vis third States. The Convention does, however, specifically require them to endeavor to coordinate with each other in the areas of management of living resources, environmental protection and scientific research and to invite, as appropriate, other interested States and international organizations to cooperate with them in these undertakings (article 123).

These provisions do not place or authorize any additional restrictions or limitations on navigation and overflight with respect to enclosed or semi-enclosed seas beyond those that appear elsewhere in the Convention.

RIGHT OF ACCESS OF LAND-LOCKED STATES TO AND FROM THE SEA AND FREEDOM OF TRANSIT (Part X, Articles 124-132)

Part X addresses the rights of access of land-locked States to and from the sea. It draws from, and expands upon, article 3 of the High Seas Convention. Part X also tracks quite closely the 1965 Convention on Transit Trade of Land-locked States, 19 UST 7383, TIAS No. 6592, 597 UNTS 42.

Article 124 defines several terms applicable to this Part of the Convention. In particular, a land-locked State is one which does not have a sea coast, and a transit State is one that is situated between a land-locked State and the sea, through whose territory traffic in transit passes.

Article 125 gives land-locked States the right of access to and from the sea. The remaining articles of Part X address the specific rights and obligations of land-locked and transit States. Exact terms of transit are to be agreed upon between the land-locked and transit States concerned. The United States is neither. It does, however, have interests in trade with land-locked States and in their economic development. Those interests are furthered by Part X.

Worldwide, there are now 42 land-locked States:

Africa (15): Botswana, Burkina, Burundi, Central African Republic, Chad, Ethiopia, Lesotho, Malawi, Mali, Niger, Rwanda, Swaziland, Uganda, Zambia, Zimbabwe

Asia (12): Afghanistan, Armenia, Azerbaijan, Bhutan, Kazakhstan, Kyrgyzstan, Laos, Mongolia, Nepal, Tajikistan, Turkmenistan, Uzbekistan

Europe (13): Andorra, Austria, Belarus, Czech Republic, Holy See, Hungary, Liechtenstein, Luxembourg, F.Y.R.O.M.[1], Moldova, San Marino, Slovakia, Switzerland

South America (2): Bolivia, Paraguay.

OTHER RIGHTS OF LAND-LOCKED STATES AND GEOGRAPHICALLY DISADVANTAGED STATES (Articles 69-71, 160-161, 254, 266, 269, 272)

Several articles in the Convention require that specific consideration be given to land-locked and geographically disadvantaged States. Article 70(2) defines a geographically disadvantaged State (GDS) as one which either can claim no EEZ of its own, or one whose geographical situation makes it dependent upon the exploitation of living resources in the EEZs of other coastal States in its region or subregion. The articles relating to access to fisheries are discussed above in connection with living marine resources.

The Assembly of the Authority is to consider problems of a general nature in connection with activities in the Area arising in particular for developing States, particularly for land-locked States and geographically disadvantaged States (article 160(1)(k)).

Article 254 provides for land-locked States and GDS to be given the opportunity to participate in marine scientific research in areas off neighboring coastal States. Articles 266, 269 and 272 further call upon States, either directly or through competent international organizations, to endeavor to promote the development of marine scientific and technological capacity through programs of technical cooperation with land-locked States and geographically disadvantaged States.

DEVELOPMENT AND TRANSFER OF MARINE TECHNOLOGY (Part XIV, Articles 266-278)

Part XIV of the Convention is largely declaratory of policy and imposes few specific obligations. It will not compel any change in U.S. practices or policy. It encourages States to promote the development and transfer of marine technology, particularly in relation to achieving more widespread participation in and benefit from marine scientific research activities covered in Part XIII. Technology transfer

[1]Former Yugolsav Republic of Macedonia.

regarding deep sea-bed mining was discussed above, except for articles 273-275, which are discussed below.

Article 266 urges States to cooperate in accordance with their capabilities in promoting development and transfer of marine science and technology on fair and reasonable terms and conditions, as well as to promote the marine scientific and technological capacity of States, particularly developing countries, which may need and request assistance in this field. In promoting such cooperation, States are to have due regard for the rights and duties of holders, suppliers and recipients of marine technology.

Article 268 lists basic objectives to be promoted by States, directly or through competent international organizations. These include the acquisition, evaluation and dissemination of marine technological knowledge and facilitation of access to data and information; the development of appropriate marine technology, as well as of the infrastructure to facilitate transfer of marine technology; and the development of human resources through training and education of developing country nationals. In that regard, the IMO has established the World Maritime University in Malmo, Sweden, and the International Maritime Law Institute in Malta.

Article 269 identifies measures to achieve these objectives, including the establishment of technical cooperation programs; promotion of favorable conditions for conclusion of agreements, contracts and other similar arrangements, under equitable and reasonable conditions; holding conferences, seminars and symposia; promotion of the exchange of scientists and experts; and undertaking projects and promotion of joint ventures and other forms of bilateral and multilateral cooperation.

International cooperation to promote development and transfer of marine technology should include use of existing programs (article 270); establishment of generally accepted guidelines, criteria and standards for the transfer of such technology on a bilateral basis or within the framework of international organizations (article 271); and coordination of the activities of competent international organizations (article 272).

Article 273 calls upon States to cooperate with competent international organizations and the Authority to encourage and facilitate transfer to developing countries and the Enterprise of skills and marine technology regarding activities in the Area (i.e., exploration and exploitation of sea-bed minerals). With further respect to activities in the Area, article 274 urges the Authority itself, subject to the rights and duties of holders, suppliers and recipients of marine technology, to provide training and employment opportunities to developing country nationals; to make available, as requested and particularly to developing countries, technical documentation on relevant technologies; and to facilitate technical assistance to developing countries in acquiring skills and know-how as well as hardware.

Article 275 encourages States to promote, particularly in developing coastal States, establishment of national marine scientific and technological research centers, as well as strengthening of existing centers, while article 276 emphasizes the establishment of regional marine scientific and technological centers, particularly in developing countries. The functions of such centers are to include training and education; management studies and studies on the health of the marine environment; organization of regional conferences, seminars and symposia; acquisition and processing of marine scientific and technological data and information, as well as dissemination of results of marine scientific and marine technological research; and compilation of information on specific technologies and study of national policies on transfer of marine technology (article 277).

Under Part XIII (marine scientific research), as well as Part XIV, competent international organizations are called upon to take all appropriate measures directly or in close cooperation to carry out their responsibilities under Part XIV (article 278).

DEFINITIONS (Part I, Article 1)

Various provisions of the Convention define key terms. Article 1(1) contains the definitions of five terms for purposes of the entire Convention: Area; Authority; activities in the Area; pollution of the marine environment; and dumping. The first three of these definitions relate to the regime for deep sea-bed mining and are discussed above. The next two definitions relate to marine environmental issues, and are also discussed above.

Article 1(2) contains a standard definition for the term "States Parties" and also makes clear that the term applies, *mutatis mutandis*, to certain other entities (such as the European Community) entitled to become party to the Convention under article 305, in accordance with the conditions relevant to each.

Certain terms are defined elsewhere in the Convention, but also for purposes of the entire Convention: archipelagic baselines (article 47); archipelagic sea lanes passage (article 53(3)); archipelagic State (article 46); archipelago (article 46); bay (article 10(2)); contiguous zone (article 33); continental shelf (article 76); enclosed or semi-enclosed sea (article 122); EEZ (article 55); innocent passage (article 19(2)); internal waters (article 8); landlocked State (article 124(1)(a)); low-tide elevation (article 13(1); means of transport (article 124(1)(d)); passage (article 18(1)); piracy (article 101); pirate ship or aircraft (article 103); territorial sea (article 2); transit passage (article 38(2)); transit State (article 124(1)(c)); unauthorized broadcasting (article 109); and warship (article 29).

Certain terms are given specific meanings for a particular Part or a given article of the Convention, particularly in relation to deep sea-bed mining. Neither the term "ship" nor the term "vessel" is defined in the Convention; the two are considered to be synonymous.

Few of these terms were defined in the Territorial Sea Convention, the Continental Shelf Convention, or the High Seas Convention. The definitions

included in the LOS Convention thus represent an advance in the effort to make the law of the sea more precise and predictable.

GENERAL PROVISIONS (Part XVI, Articles 300-304)

Part XVI of the Convention contains five "general provisions" to guide the interpretation and application of the Convention as a whole, or of specific parts of it.

Good Faith and Abuse of Rights (Article 300)

This article restates existing customary law. The requirement of good faith reflects article 2(2) of the United Nations Charter and the fundamental rule *pacta sunt servanda*, reflected in article 26 of the Vienna Convention on the Law of Treaties.

Peaceful Uses of the Seas (Articles 88, 141, 143(1), 147(2)(d), 155(2), 240(a), 242(1), 246(3), 301)

Article 301 reaffirms that all States Parties, whether coastal or flag States, in exercising their rights and performing their duties under the Convention with respect to all parts of the sea, must comply with their duty under article 2(4) of the United Nations Charter to refrain from the threat or use of force against the territorial integrity or political independence of any States.

Other provisions of the Convention echo this requirement. Article 88 reserves the high seas for peaceful purposes, while articles 141 and 155(2) reserves the Area for peaceful purposes. Under articles 143(1), 147(2)(d), 240(a), 242(1) and 246(3), marine scientific research is required to be conducted for peaceful purposes.

None of these provisions creates new rights or obligations, imposes restraints upon military operations, or impairs the inherent right of self-defense, enshrined in article 51 of the United Nations Charter. More generally, military activities which are consistent with the principles of international law are not prohibited by these, or any other, provisions of the Convention.

Disclosure of Information (Article 302)

Without prejudice to the use of the Convention's dispute settlement procedures, in fulfilling its obligations under the Convention, a State Party is not required to supply information the disclosure of which is contrary to the essential interests of its security.

Archaeological and Historical Objects Found at Sea (Articles 33, 149 and 303)

Article 303 imposes a general duty on States to protect objects of an archaeological and historical nature found at sea and to cooperate for this purpose. This obligation was implemented by the Abandoned Shipwreck Act of 1987, 42 U.S.C. §§ 2101-2106, and implementing regulations 54 Fed. Reg. 13642 *et seq.*; the National Marine Sanctuary Act, 16 U.S.C. section 1431 *et seq*; the Archaeological Resources Protection Act, 16 U.S.C. § 470aa-ll, and its uniform regulations 43 CFR Part 7, 36 CFR Part 296, 18 CFR Part 1312, 32 CFR Part 229; the National Historic Preservation Act, 16 U.S.C. § 470, 36 CFR Part 800; the Antiquities Act of 1906, 16 U.S.C. §§ 431-433; and the National Register of Historic Places, 36 CFR Parts 60 & 63.

Coastal State competence to control the activities of foreign nationals and foreign flag ships in this regard is limited to internal waters, its territorial sea, and if it elects, to its contiguous zone (article 303(2)). The United States has not decided whether to extend its contiguous zone for this purpose.

Under article 149, all such objects found on the sea-bed beyond the limits of national jurisdiction must be preserved and disposed of for the benefit of mankind as a whole. Particular regard must be paid to the preferential rights of the State or country of origin, the State of cultural origin, or the State of historical or archaeological origin.

Article 303(3) clarifies that the Convention is not intended to affect the rights of identifiable owners, admiralty law, and the laws and practices concerning cultural exchanges. Article 303 is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature (article 303(4)). For example, in 1989, the United States and France entered into an agreement for the protection and study of the wreck of the CSS *Alabama*, sunk by USS *Kearsarge* on June 19, 1864, in waters now forming part of the French territorial sea (TIAS No. 11687).

The term "objects of an archaeological and historical nature" is not defined in the Convention. It is not intended to apply to modern objects whatever their historical interest.

Responsibility and Liability For Damage (Article 304)

The many specific provisions of the Convention regarding State responsibility and liability for damage (articles 31, 42(5), 106, 110(3), 139, 232, 235, 263) are without prejudice to existing rules and the development of further rules.

FINAL PROVISIONS (Part XVII, Articles 305-320)

The final provisions of the Convention contain a number of innovations in addition to the usual final clauses.

Signature (Article 305)

The Convention was open for signature for two years from the date of its adoption, December 10, 1982. By December 9, 1984, the Convention had been signed by 159 States and other entities entitled to sign it (Cook Islands, EEC, United Nations Council for Namibia and Niue). Along with the United States, 13 other States then in existence did not sign the Convention: Albania, Ecuador, Federal Republic of Germany, the Holy See, Israel, Jordan, Kiribati, Peru, San Marino, Syria, Turkey, the United Kingdom, and Venezuela. The Trust Territory of the Pacific Islands and the West Indies Associated States also did not sign the Convention, although they were eligible to do so.

Ratification and Accession (Articles 306 and 307)

The Convention makes signature subject to ratification. As of September 8, 1994, 65 States had deposited their instruments of ratification, accession or succession to the Convention.

Entry Into Force (Article 308)

Pursuant to article 308, the Convention enters into force 12 months after the deposit of the 60th instrument of ratification or accession. That instrument was deposited on November 16, 1993; accordingly, the Convention will enter into force on November 16, 1994.

Thereafter, the Convention will enter into force for a State ratifying or acceding to it 30 days following deposit of its instrument of ratification or accession.

(The entry into force of the Agreement, and its effect in revising Part XI, is discussed above in the section relating to deep sea-bed mining.)

Reservations, Exceptions, Declarations and Statements (Articles 309 and 310)

Article 309 prohibits reservations and exceptions to the Convention, except where expressly permitted by other articles. No other article permits reservations; only article 298 permits exceptions and allows a Party to exclude certain categories of disputes from compulsory dispute settlement.

Article 310 provides that a State may make declarations or statements when signing, ratifying or acceding to the Convention, provided they are not reservations, i.e., that they do not purport to exclude or modify the legal effect of the provisions of the Convention in their application to that State.

Relation to Other International Agreements (Article 311)

The Convention considers the effect of the Convention on earlier agreements, and of later agreements on the Convention, where the same State is party to both, in a manner that is generally consistent with the Vienna Convention on the Law of Treaties.

Agreements, existing or future, that are expressly permitted or preserved by the Convention are not affected by the Convention. Examples of such agreements would include maritime boundary treaties between States with opposite or adjacent coasts.

Amendment (Articles 312-316)

The Convention creates distinct regimes for amendments relating to activities in the Area (i.e., deep sea-bed mining activities) and to all other parts of the Convention.

With respect to amendments not relating to activities in the Area, amendments to the Convention may be adopted in either of two ways. First, beginning in November 2004, the States Parties may convene a conference, if more than half the States Parties agree to do so, for the purpose of considering and adopting amendments to the Convention (article 312).

Second, proposed amendments that are circulated at any time after entry into force of the Convention shall be considered adopted if no State objects to the amendment, or to use of the simplified procedure, within 12 months of circulation of the amendment (article 313).

In either case, amendments are subject to ratification. They enter into force only for States ratifying them, after they have been ratified by two-thirds of, but not fewer than 60, States Parties (article 316(1)).

With respect to amendments relating to activities in the Area (i.e., deep sea-bed mining), amendments to the deep sea-bed mining regime can only be adopted upon the approval of the Council and Assembly of the Authority. The Council, on which the United States is guaranteed a seat in perpetuity (provided we are party), can only adopt such amendments by consensus (article 161(8)(d)).

Because the sea-bed mining regime creates an institutional structure that can operate only on the basis of one set of rules applicable to all, amendments to this regime enter into force for all States Parties one year after three-fourths of the States Parties ratify.

As noted above, the Agreement abolishes the Review Conference.

Denunciation (Withdrawal) (Article 317)

A State Party may denounce the Convention on one year's notice. Article 317 also addresses certain consequences of denunciation.

Status of Annexes (Article 318)

The Annexes form an integral part of the Convention.

Depositary (Article 319)

The Secretary-General of the United Nations is the depositary and is assigned the normal functions of a Depositary, as well as those consequential to particular provisions in the Convention.

Authentic Texts (Article 320)

The texts in the six official languages of the United Nations are equally authentic. ■

STATUS OF THE CONVENTION AND AGREEMENT

As of February 23, 1995, there are 73 parties to the Law of the Sea Convention, 12 States (of the 73 States and entities to have signed the Agreement) have consented to be bound by the Agreement in Implementation of Part XI, and 116 States and entities have agreed to apply provisionally the Agreement.

Parties to the Convention

Angola, Antigua and Barbuda, Australia, The Bahamas, Bahrain, Barbados, Belize, Bosnia-Herzegovina, Botswana, Brazil, Cameroon, Cape Verde, Comoros, Cook Islands, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Djibouti, Dominica, Egypt, Federal Republic of Yugoslavia[1], Fiji, The Gambia, Germany, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Honduras, Iceland, Indonesia, Iraq, Italy, Jamaica, Kenya, Kuwait, Lebanon, The Former Yugoslav Republic of Macedonia, Mali, Malta, Marshall Islands, Mauritius, Mexico, Federated States of Micronesia, Namibia, Nigeria, Oman, Paraguay, Philippines, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Singapore, Slovenia, Somalia, Sri Lanka, Sudan, Tanzania, Togo, Trinidad and Tobago, Tunisia, Uganda, Uruguay, Vietnam, Yemen, Zaire, Zambia, Zimbabwe.

In addition, the following countries have informally indicated their intention to become party to the Convention once their internal procedures are completed:

Austria, Belgium, Canada, Chile, China, Denmark, Finland, France, Greece, India, Ireland, Japan, Republic of Korea, Luxembourg, Netherlands, New Zealand, Panama, Portugal, South Africa, Spain, Sweden, Switzerland, Ukraine, United Kingdom.

Agreement in Implementation of Part XI

The following States have consented to be bound by the Agreement:

Australia, Belize, Cook Islands, Germany, Italy, Kenya, Lebanon, The Former Yugoslav Republic of Macedonia, Mauritius, Seychelles, Sierra Leone, Singapore.

The following States and entity have signed the Agreement:

Algeria, Argentina, Australia, Austria, The Bahamas, Barbados, Belgium, Brazil, Burkina Faso, Canada, Cape Verde, China, Cote d'Ivoire, Cyprus, Czech Republic, Denmark, European Community, Fiji, Finland, France, Germany, Greece, Grenada, Guinea, Iceland, India, Indonesia, Ireland, Italy, Jamaica, Japan, Republic of Korea, Laos, Luxembourg, Malaysia, Maldives, Malta, Mauritania, Federated States of Micronesia, Monaco, Mongolia, Morocco, Namibia, Netherlands, New Zealand, Nigeria, Pakistan, Paraguay, Philippines, Poland, Portugal, Senegal, Seychelles, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Tanzania, Togo, Trinidad and Tobago, Uganda, United Kingdom, United States, Uruguay, Vanuatu, Zambia, Zimbabwe.

The following States and entity have agreed to apply the Agreement provisionally:

Afghanistan, Albania, Algeria, Andorra, Argentina, Armenia, Australia, Austria, The Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brunei, Bulgaria, Burkina Faso, Burma, Burundi, Cambodia, Canada, Cape Verde, Chile, China, Congo, Cote d'Ivoire, Cuba, Czech Republic, Egypt, Eritrea, Estonia, Ethiopia, European Community, Fiji, Finland, France, Gabon, Germany, Ghana, Greece, Grenada, Guinea, Guyana, Honduras, Iceland, India, Indonesia, Iraq, Italy, Jamaica, Japan, Kenya, Republic of Korea, Kuwait, Laos, Libya, Liechtenstein, Luxembourg, Madagascar, Malaysia, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Federated States of Micronesia, Moldova, Monaco, Mongolia, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Papua New Guinea, Paraguay, Philippines, Poland, Qatar, Russia, Senegal, Seychelles, Singapore, Slovakia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Switzerland, Tanzania, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Vanuatu, Vietnam, Western Samoa, Zambia, Zimbabwe. ❑

[1]Serbia and Montenegro have asserted the formation of a joint independent state, but this entity has not been recognized as a state by the United States.

資料 6

LOS AND THE ACADEMIC RESEARCH SCIENTIST

J. Ashley Roach[1]

U.S. Marine Scientific Research Policy

The LOS Convention solidifies coastal State control over Marine Scientific Research (MSR) in waters subject to their jurisdiction, waters which now encompass considerably more of the globe now than in 1958.[2] Nevertheless, U.S. policy is to encourage freedom of marine scientific research. That policy was fostered by the U.S. decision, first stated in the President's Oceans Policy Statement of March 10, 1983,[3] and reaffirmed in October 1994 in the documents transmitting the LOS Convention to the Senate,[4] to not claim jurisdiction over MSR in its EEZ,

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[1] Captain, JAGC, USN (ret.), Office of the Legal Adviser, U.S. Department of State. This paper is a revised version of a speech delivered at a conference on observing the oceans at the Woods Hole Oceanographic Institution on January 10, 1995.

[2] Accompanying Germany's instrument of accession to the LOS Convention was a declaration concerning marine scientific research, which reads as follows:

> Although the traditional freedom of research suffered a considerable erosion by the Convention, this freedom will remain in force for States, international organizations and private entities in some maritime areas, e.g., the sea-bed beyond the continental shelf and the high seas. However, the exclusive economic zone and the continental shelf, which are of particular interest to marine scientific research, will be subject to a consent regime, a basic element of which is the obligation of the coastal State under article 246, paragraph 3, to grant its consent in normal circumstances. In this regard, promotion and creation of favourable conditions for scientific research, as postulated in the Convention, are general principles governing the application and interpretation of all relevant provisions of the Convention.
>
> The marine scientific research regime on the continental shelf beyond 200 nautical miles denies the coastal State the discretion to withhold consent under article 246, paragraph 5(a), outside areas it has publicly designated in accordance with the prerequisites stipulated in paragraph 6. Relating to the obligation, to disclose information about exploitation or exploratory operations in the process of designation is taken into account in article 246, paragraph 6, which explicitly excluded details from the information to be provided.

Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 1994, UN Doc. ST/LEG/SER.E/13, at 859 (UN Sales No. E.95.V.5, 1995).

[3] When claiming its EEZ in 1983, the United States chose not to assert the right of jurisdiction over marine scientific research within the zone. President Reagan explain the rationale for not doing so, as follows:

> While international law provides for a right of jurisdiction over marine scientific research within such a zone, the proclamation does not assert this right. I have elected not to do so because of the United States interest in encouraging marine scientific research and avoiding any unnecessary burdens. The United States will nevertheless recognize the right of other coastal states to exercise jurisdiction over marine scientific research within 200 nautical miles of their coasts, if that jurisdiction is exercised in a manner consistent with international law.

President's Ocean Policy Statement, Mar. 10, 1983, I PUBLIC PAPERS OF THE PRESIDENTS: RONALD REAGAN 1983, at 378-79.

[4] Commentary, Sen. Treaty Doc. 103-39, at 80; 6 State Dept. Dispatch Supplement No. 1, Feb. 1995, at 44.

a right provided for under international law reflected in the LOS Convention. The United States declined to assert jurisdiction in its EEZ over MSR because of its interest in encouraging MSR and promoting its maximum freedom while avoiding unnecessary burdens. The Department of State is charged with facilitating access by U.S. scientists to foreign EEZ's under reasonable conditions. Consequently, since 1983 the U.S. requests permission through diplomatic channels for U.S. research vessels to conduct MSR within 200 miles of a State asserting such jurisdiction.[5]

The United States does not claim jurisdiction over fisheries research except when it involves commercial gear or commercial quantities of fish, and even then it may qualify as scientific research. The United States does, however, claim jurisdiction over marine mammal research.[6]

Role of the U.S. State Department in MSR

Within the Bureau of Oceans and International Environmental and Scientific Affairs (OES) is the Office of Ocean Affairs (OA), a division of which is the Marine Science and Technology Affairs Division (OA/MST).

The Marine Science Division is responsible for assuring that U.S. policy is adhered to in acquiring permission from the coastal State, when required for such research, and for coordinating and processing of the request, as well as in processing requests from foreign researchers to conduct MSR in the U.S. territorial sea.

OES is headed by Assistant Secretary Elinor Constable. The Deputy Assistant Secretary for Oceans is Ambassador David Colson (OES/O). The Office of Ocean Affairs is headed by Tucker Scully, and the Director of the Marine Science Division is Bill Erb. Mr. Erb is ably assisted by Mr. Tom Cocke, who is charged with processing all applications to conduct MSR.

Definitions

Coastal State jurisdiction over foreign marine scientific research differs depending on which activity is involved and on the maritime zone in which it is conducted.

The LOS Convention does not define the terms "marine scientific research", "survey activities", "hydrographic survey", or "military survey". However, the concepts are distinct.

MARINE SCIENTIFIC RESEARCH

The United States accepts that "marine scientific research" (MSR) is the general term most often used to describe those activities undertaken in the ocean and coastal waters to expand scientific knowledge of the marine environment and its processes.[7] MSR includes oceanography, marine

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[5] The United Kingdom similarly acts on behalf of British scientists seeking authorization to conduct MSR in foreign waters. 56 Br. Y.B. Int'l L. 1985, at 500.

[6] 16 U.S.C. § 1374(c).

[7] *Accord*, SOONS, MARINE SCIENTIFIC RESEARCH AND THE LAW OF THE SEA 124 (1982) (hereinafter, SOONS).

biology, fisheries research, scientific ocean drilling and coring, geological/geophysical scientific surveying, as well as other activities with a scientific purpose. It is distinguished from hydrographic survey, from military activities, including military surveys, and from prospecting and exploration.[8]

HYDROGRAPHIC SURVEY

The generally accepted modern international interpretation of "hydrographic survey", which is shared by the United States, is to obtain information for the making of navigational charts and safety of navigation. It includes determination of one or more of several classes of data in coastal or relatively shallow areas--depth of water, configuration and nature of the natural bottom, directions and force of currents, heights and times of tides and water stages, and hazards for navigation--for the production of nautical charts and similar products to support safety of navigation, such as Sailing Directions, Light Lists and Tide Manuals for both civil and military use.[9] Coastal, harbor and harbor approach charts and other products are published by the U.S. Defense Mapping Agency and made available to mariners of all nations.[10]

In many areas of the world, the production of up-to-date charts has had a positive impact on economic development in coastal areas, stimulating trade and commerce and the construction or modernization of harbor and port facilities. By helping safety of navigation for ships transiting off-shore, up-to-date charts also play a role in protecting coastal areas from the environmental pollution which results from wrecks of freighters and tankers carrying hazardous cargoes. Data collected during hydrographic surveys may also be of value in coastal zone management and coastal science and engineering.

MILITARY SURVEYS

The United States considers that military surveys refer to activities undertaken in the ocean and coastal waters involving marine data collection (whether or not classified) for military purposes. Military surveys can include oceanographic, marine geological, geophysical, chemical, biological and acoustic data. Equipment used can include fathometers, swath bottom mappers, side scan sonars, bottom grab and coring systems, current meters and profilers. While the means of data collection used in military surveys may sometimes be the same as that used in MSR, information from such activities, regardless of security classification, is intended not for use by the general scientific community, but by the military.[11]

SURVEY ACTIVITIES

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[8] Commentary on LOS Convention, Sen. Treaty Doc. 103-39, at 80; SOONS 125 (MSR differs from hydrographic surveys and resource exploration). In discussing MSR for military purposes, Soons (at 135) does not mention military surveys or other military activities.

[9] *Cf.* IHO Definition 40 [any better cite?]

[10] 10 U.S.C. § 2791 *et seq.*

[11] ROACH & SMITH, EXCESSIVE MARITIME CLAIMS 248, 66 U.S. NAVAL WAR COLLEGE, INTERNATIONAL LAW STUDIES (1994).

This term is used to include hydrographic surveys and military surveys.

MILITARY ACTIVITIES

Military activities include launching and landing of aircraft, operating military devices, intelligence collection, weapons exercises, and military surveys.

Legal Regimes Under the 1958 Geneva Conventions

Prior to the Third UN Law of the Sea Conference, each coastal State possessed sovereignty over a narrow territorial sea and sovereign rights over its continental shelf for the purpose of exploring and exploiting its natural resources. High seas freedoms, including the freedom to conduct MSR and surveys, pertained in the water column seaward of the territorial sea, including over the continental shelf, and of the seabed seaward of the outer limits of exploitability of the continental shelf.

The United States is a party to the four 1958 Geneva Conventions on the Law of the Sea, which established a regime -- of sorts -- for MSR and surveys. The Continental Shelf Convention recognizes coastal State jurisdiction over MSR involving the continental shelf and physically undertaken there, but is silent regarding surveys. The coastal State is normally expected to give its consent if the request is in connection with purely scientific research and is submitted by a qualified institution. The coastal State has the right to participate or be represented in research. The results of the research must be published.[12] The High Seas Convention, expressly codifying customary international law, recognizes the freedom of the seas, including the water column over the continental shelf, without specifically mentioning MSR or surveys as one of those freedoms among the illustrative list of freedoms.[13] Nevertheless, the conduct of MSR is regarded as a exercise of the freedom of the high seas.[14] The Convention on the Territorial Sea and the Contiguous Zone is silent on MSR and surveys, except to provide that the territorial sea and subjacent seabed and subsoil are under the sovereignty of the coastal State.[15] If follows that the consent of the coastal State must be obtained for research work in its territorial sea.[16] The Fishing Convention[17] is silent on marine scientific research. Thus, the

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[12] 1958 Convention on the Continental Shelf, 15 UST 471, TIAS 5578, 499 UNTS 311, article 5(1) & (8). SOONS 56-58 examines the meaning of these two paragraphs, concluding that the customary international law rules are essentially the same as those set out in paragraphs 1 and 8 of article 5.

[13] 1958 Convention on the High Seas, 13 UST 2312, TIAS 5200, 450 UNTS 82, article 2.

[14] The United Kingdom agreement with the position may be found in 56 Br. Y.B. Int'l L. 1985, at 501. The United States concurs in this position. Soon comes to the same conclusion after reviewing the *travaux préparatoires*, state practice, and the views of publicists. SOONS 47-55.

[15] 1958 Convention on the Territorial Sea and the Contiguous Zone, 15 UST 1606, TIAS 5639, 516 UNTS 205, articles 1-2.

[16] 56 Br. Y.B. Int'l L. 1985, at 501; SOONS 46.

[17] 1958 Convention on Fishing and Conservation of Living Resources of the High Seas, 17 UST 138, TIAS 5969, 559 UNTS 285.

1958 Geneva Conventions contain very little treaty law on MSR and marine surveys.[18] Nevertheless, prior to the LOS Convention, freedom of MSR and to conduct marine surveys existed in most of the oceans seaward of the narrow territorial sea, and of the seabed seaward of 200 meters depth or where the continental shelf could not be exploited.

Legal Regimes Under the LOS Convention

During that decade-long negotiations that culminated in the adoption on December 10, 1982, of the UN Convention on the Law of the Sea, the United States sought to maximize the areas in which MSR could continue to be conducted free of coastal State control, to create a regime that maximized timely and unencumbered access by foreign researchers to areas under coastal State jurisdiction, and to maintain the right to conduct marine surveys seaward of the territorial sea free of coastal State control. These negotiations were conducted in the context of increasing acceptance of a 12-mile territorial sea under coastal State sovereignty, of the 200-mile exclusive economic zone (EEZ) under coastal State jurisdiction for economic purposes, and of an expanded continental shelf that was at least 200 miles wide, and could be even wider for the broad-margin States such as the United States.

The results of those difficult negotiations resulted in a diminution of the oceanic areas in which there was freedom of MSR, coupled with a consent regime for MSR in the EEZ and on the subjacent continental shelf,[19] while the freedom to conduct marine surveys was largely unchanged.[20] In 1983, the President decided that, Part XI aside, the rest of the LOS Convention supported U.S. interests, including that of encouraging freedom of marine scientific research.[21]

During the decade following adoption of the LOS Convention, questions arose as to the legal status of the non-seabed provisions of the Law of the Sea Convention. Some of its provisions -- mostly coastal State rights, including the right to control MSR -- have been widely accepted and thus came to be considered as part of international law. However, other provisions -- mostly duties, including coastal State duties to foreign researchers regarding MSR -- were not adequately followed and thus are clearly binding only on States party to the Convention now that it has entered into force.

More specifically, the LOS Convention clearly recognizes the maximum breadth of the territorial sea is 12 nautical miles. Only those 17 States now claiming a broader territorial sea might disagree,[22] and their number is steadily diminishing.[23] Entry into force of the LOS

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[18] This regime is replaced by the detailed regime set out in the LOS Convention, for States parties to these treaties. LOS Convention, article 311(1).

[19] SOONS 261.

[20] de Marffy, *Marine Scientific Research*, *in* 2 A HANDBOOK ON THE NEW LAW OF THE SEA 1140 (Dupuy & Vignes eds., 1991) ("the balance is tipped much more in favour of coastal States than in favour of researching States, and this is perhaps harmful to scientific research in general").

[21] President's Ocean Policy Statement, *supra* n. 3.

[22] Eleven of them claim a 200 mile territorial sea: Benin, Congo, Ecuador, El Salvador, Liberia, Nicaragua, Panama, Peru, Sierra Leone, Somalia, Uruguay. Cameroon claims a 50 mile territorial sea; Syria claims a 35 mile territorial sea; Nigeria and Togo claim a 30 mile territorial sea; Angola claims a 20 mile territorial sea. The Philippines claims a territorial sea which extends to 285 miles in some locations.

Convention increases the pressure on them to roll back their claims. Within that territorial sea, the coastal State exercises complete sovereignty, and MSR is now clearly under its exclusive control. The LOS Convention explicitly provides that the coastal State has "the exclusive right to regulate, authorize and conduct" MSR in its territorial sea, which may be "conducted only with the express consent of and under the conditions set forth by the coastal State."[24] Further, the LOS Convention expressly states that the "carrying out of research or survey activities" makes passage through the territorial sea not innocent[25] and expressly authorizes the coastal State to enact laws and regulations relating to innocent passage through the territorial sea in respect of "marine scientific research" as well as "hydrographic surveys".[26]

Under the LOS Convention, the regime of passage through international straits does 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.[27] Accordingly article 40 provides that during transit passage through such straits, foreign ships, "including marine scientific research and hydrographic survey ships," may not carry out any research or survey activities without the prior authorization of the States bordering straits. The same rules apply to archipelagic sea lanes passage.[28]

International law now recognizes the right of all coastal States to claim EEZs, that may extend seaward 200 miles from their territorial sea baselines, or to median lines where the opposite coasts are less than 400 miles apart. Indeed, some 90 coastal States have done so.[29] International law further recognizes that within its EEZ a coastal State may exercise jurisdiction over MSR.[30] The LOS Convention provides the legal framework for the exercise of that jurisdiction.[31]

International law also now recognizes the sovereign right of the coastal State to explore (and exploit) the natural resources of its continental shelf, which may -- as in the case of the United States -- extend beyond 200 miles, but in most cases no more than 350 miles from the territorial sea baseline.[32] The Convention provides the legal framework for the exercise of MSR jurisdiction on the continental shelf.[33]

Seaward of the EEZ lie the high seas and the seabed beyond the limits of national jurisdiction. Here the LOS Convention clearly advances the rights of the scientific community by expressly recognizing, for the first time, that MSR is a freedom of the high seas that may be

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[23] Sixteen States have rolled back their territorial sea claims to 12 miles since international agreement was reached on that limit: Albania, Argentina, Brazil, Cape Verde, Gabon, Germany, Ghana, Guinea, Guinea-Bissau, Haiti, Madagascar, Maldives, Mauritania, Senegal, Tanzania and Tonga. As recently as May 16, 1995, Panama announced at the second meeting of States Parties to the LOS Convention that it was considering rolling back its 200 mile territorial sea claim to 12 miles.

[24] LOS Convention, article 245.

[25] *Id.*, article 19(2)(j).

[26] *Id.*, article 21(1)(g).

[27] *Id.*, article 34(1).

[28] *Id.*, article 54.

[29] For a recent list, see U.S. Dep't of State, Limits in the Seas No. 36 (Rev. 7, 1995).

[30] LOS Convention, article 56(1)(b)(ii).

[31] *Id.*, article 246.

[32] *Id.*, article 76.

[33] *Id.*, article 246.

exercised by all States.[34] Further, all States, as well as the International Seabed Authority, are permitted to carry out MSR in the seabed beyond national jurisdiction.[35] On the other hand, the LOS Convention is silent regarding marine surveys seaward of the territorial sea.

MSR Under the LOS Convention

The conduct of MSR is fully regulated by Part XIII of the LOS Convention which does not apply to marine surveys of any sort. The Convention confirms the right of all States and competent international organizations to conduct MSR[36] and the duty to facilitate the conduct of MSR in accordance with the terms of the Convention.[37] The Convention sets forth the rights and obligations of States and competent international organizations with respect to the conduct of marine scientific research in different areas.

TERRITORIAL SEA

Article 245 recognizes the unqualified right of coastal States to regulate, authorize and conduct marine scientific research in the territorial sea. Therefore, access to the territorial sea, and the conditions under which a research project can be conducted there, are under the exclusive control of the coastal State.[38]

ARCHIPELAGIC WATERS

As archipelagic waters are under the sovereignty of the archipelagic State, marine scientific research is subject to the consent of that State.[39]

INTERNATIONAL STRAITS AND ARCHIPELAGIC SEA LANES

Part XIII contains no provisions specifically targeted to international straits or archipelagic sea lanes. However, under article 40, during transit passage, 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." The same rule applies to such ships exercising the right of archipelagic sea lanes passage.[40]

EEZ AND CONTINENTAL SHELF

Under article 246, coastal States have the right to regulate, authorize and conduct marine

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[34] *Id.*, articles 87(1)(f) & 257.

[35] *Id.*, articles 143 & 256.

[36] *Id.*, article 238.

[37] *Id.*, article 239.

[38] *See also id.*, articles 21(1)(g), 19(2)(j)), 40 and 54. There is no appeal if consent is refused or unreasonable conditions are imposed. 56 Br. Y.B. Int'l L. 1985, at 501.

[39] SOONS 153.

[40] LOS Convention, article 54.

scientific research in the EEZ and on the continental shelf. Access by other States or competent international organizations to the EEZ or continental shelf for a marine scientific research project is subject to the consent of the coastal State. The consent requirement, however, is to be exercised in accordance with certain standards and qualifications.

In normal circumstances, the coastal State is under the obligation to grant its consent to requests to conduct MSR in its EEZ or on its continental shelf. (It is explicitly provided that circumstances may be normal despite the absence of diplomatic relations.[41]) The coastal State, nevertheless, has the discretion to withhold its consent if the research project is of direct significance for the exploration and exploitation of living or non-living resources; involves drilling, the use of explosives or introduction of harmful substances into the marine environment; or involves the construction, operation and use of artificial islands, installations or structures.[42] (The first of these grounds for withholding consent may be used on the continental shelf beyond 200 miles only in areas specially designated as under development.[43]) It may also withhold consent if the sponsor of the research has not provided accurate information about the project or has outstanding obligations in respect of past projects.[44] If requested, the coastal State should state the reasons for denying consent, otherwise the researching State will not be in a position to determine what adjustments would be require to enable the project to proceed.[45]

The consent of a coastal State for a research project may be granted either explicitly or implicitly. Article 248 requires States or organizations sponsoring projects to provide to the coastal State, at least six months in advance of the expected starting date of the research activities, a full description of the project. The research activities may be initiated six months after the request for consent, unless the coastal State, within four months, has informed the State or organization sponsoring the research that it is denying consent for one of the reasons set forth in article 246 or that it requires more information about the project. If the coastal State fails to respond to the request for consent within four months following notification, consent may be presumed to have been granted.[46] This provision should encourage timely responses from coastal States to requests for consent.

Consent may also be presumed under article 247 to have been granted by a coastal State for a research project in its EEZ or on its continental shelf undertaken by a competent international organization of which it is a member, if it approved the project at the time that the organization decided to undertake the project and it has not expressed any objection within four months of the notification of the project by the organization.

Article 249 sets forth specific conditions with which a State or competent international organization sponsoring research in the EEZ or on the continental shelf of a coastal State must comply. These include the right of the coastal State to participate in the project, in particular through inclusion of scientists on board research vessels; provision to the coastal State of reports

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[41] *Id.*, article 246(3)-(4).

[42] *Id.*, article 246(5)(a-c).

[43] *Id.*, article 246(6).

[44] *Id.*, article 246(5)(d).

[45] IV UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY 519, para. 246.17(b) (Rosenne & Yankov, eds. 1991).

[46] LOS Convention, article 252.

and access to data and samples; assistance to the coastal State, if requested, in assessing and interpreting data and results; and ensuring that results are made internationally available as soon as practicable. Additional conditions may be established by the coastal State with respect to a project falling into a category of research activities over which the coastal State has discretion to withhold consent pursuant to article 246.

If a State or competent international organization sponsoring research in the EEZ or on the continental shelf of a coastal State fails to comply with such conditions, or if the research is not being conducted in accordance with the information initially supplied to the coastal State, article 253 authorizes the coastal State to require suspension of the research activities. If those carrying out the research do not comply within a reasonable period of time, or if the non-compliance constitutes a major change in the research, the coastal State may require its cessation.

THE HIGH SEAS AND THE AREA

Article 87 expressly recognizes conduct of marine scientific research as a freedom of the high seas. Articles 256 and 257 further clarify that marine scientific research may be conducted freely by any State or competent international organization in the water column beyond the limits of the EEZ, as well as in the Area, *i.e.*, the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction.[47] Under article 143, research in the Area is to be carried out exclusively for peaceful purposes.

RESEARCH INSTALLATIONS AND EQUIPMENT

The conditions applicable to marine scientific research set forth in the Convention apply equally to the deployment and use of installations and equipment to support such research seaward of the baseline.[48] Such installations and equipment do not possess the status of islands, though safety zones of a reasonable breadth (not exceeding 500 meters) may be created around them, consistent with the Convention. They may not be deployed in such fashion as to constitute an obstacle to established international shipping routes. They must bear identification markings indicating the State of registry or the international organization to which they belong, and have adequate internationally agreed warning signals.[49]

RESPONSIBILITY AND LIABILITY

Pursuant to article 263(1), States and competent international organizations shall be responsible for ensuring that marine scientific research, whether undertaken by them or on their behalf and wherever conducted seaward of the baseline, is conducted in accordance with the Convention. Pursuant to article 263(2), States and organizations shall be responsible and liable for any measures they take in contravention of the Convention in respect of research by other States,

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[47] If no EEZ is claimed, continental shelf restrictions apply only as stated in article 246.

[48] LOS Convention, article 258.

[49] *Id.*, articles 259-262.

their natural or juridical persons or by competent international organizations and shall provide compensation for damage resulting from such measures. With respect to damage caused by pollution of the marine environment arising out of marine scientific research undertaken by or on the behalf of States and competent international organizations, such States or organizations shall be liable pursuant to article 235.[50]

Coastal State Practice Regarding MSR Under the LOS Convention

Many coastal States are complying with the MSR regime of the LOS Convention,[51] perhaps in no small part with the assistance of a practical guide to the implementation of the MSR provisions published in 1991 by the UN's Office for Ocean Affairs and the Law of the Sea.[52] Now that the Convention has entered into force, this booklet takes on increased importance in influencing States to comply with their particular duties.

There are, however, a number of States that are not complying with the Convention's MSR provisions. Some of them are party to the Convention (e.g., Brazil, Mexico); others are not (e.g., Chile, Colombia, Russia). The problems the United States has encountered include the following:

- delays in responding to requests for ship clearances;[53]
- last minute denial of permission to conduct the research;[54]
- requiring all data, regardless of format, be provided immediately prior to departure from last port of call;[55]
- requiring the data to be provided within a fixed time after leaving the coastal State's

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[50] *Id.*, article 263(3).

[51] The various legislative enactments are briefly summarized in UN Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, The Law of the Sea: Practice of States at the time of entry into force of the United Nations Convention on the Law of the Sea (UN Sales No. E.94.V.13, 1994), at 18, 37-38, 75-76, 83-84, 97-98, 134-35 & 182. National legislation is collected in UN Office for Ocean Affairs and the Law of the Sea, The Law of the Sea: National Legislation, Regulations and Supplementary Documents on Marine Scientific Research in Areas Under National Jurisdiction (UN Sales No. E.89.V.9, 1989).

[52] UN Office for Ocean Affairs and the Law of the Sea, The Law of the Sea: Marine Scientific Research - A Guide to the Implementation of the Relevant Provisions of the United Nations Convention on the Law of the Sea (UN Sales No. E.91.V.3, 1991) (hereinafter, UN, MSR Guide). This pamphlet also suggests standardization of the forms for seeking consent and for granting permission to conduct marine scientific research in areas of national jurisdiction.

[53] The last sentence of article 246(3) requires coastal States to establish rules and procedures ensuring that consent will not be delayed or denied unreasonably. The UN MSR Guide states the coastal State "should therefore respond as quickly as can reasonably be expected to requests for consent." UN, MSR Guide 11, at para. 52.

[54] *Ibid.*

[55] Article 249(1)(b) sets no fixed time-limits for providing the preliminary reports, final results and conclusions of the research to the coastal State. Providing even a preliminary report prior to the ship's departure is not practicable. SOONS 190. Common practice is to provide the preliminary report 30 days after completion of the field portion of the research.

waters, rather than after completion of the cruise;[56]

- requiring copies of data collected in international waters, or in waters under another's country's jurisdiction;[57]
- requiring data to be held in confidence and not placed into the public domain;[58]
- requiring the cruise reports to be submitted in other than English;[59]
- requiring more than one observer to be on board;[60]
- requiring the observer to be on board during non-research legs of a voyage;[61]
- requiring research and port call requests to be submitted other than through the Foreign Ministry;[62]
- Foreign Ministry's failing to forward cruise reports to cognizant organization;[63] and
- finally, slow or incomplete staffing and coordination among interested coastal State bureaucracies.[64]

Value of the LOS Convention Today for MSR

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[56] The UN MSR Guide states that "[a]ll efforts should be made to supply the final results and conclusions within a reasonable period of time" noting that the "time span between the end of the cruise and the availability of the final results can vary substantially depending upon the nature of the research." UN, MSR Guide 19, para. 92. Final reports usually take a year or longer to prepare.

[57] The coastal State has no right under the Convention to receive such data, until it is made public.

[58] Article 249(1)(e) requires the data be made internationally available, unless it is of direct significance for the exploration and exploitation of natural resources. U.S. law requires that U.S. government-funded data must become part of the public domain. CITE

[59] The Convention is silent on this question. The UN MSR Guide recommends that consideration be given to providing the coastal State with reports "written in a language which can be read by scientists of the coastal State." UN, MSR Guide 19, para. 93.

[60] The right to participate under article 249(1)(a) is qualified to the extent that it must be "practicable". The UN MSR Guide notes that, if the right to participate is to be meaningful at all, the researching State "must always reserve space for at least one coastal State scientist on board," while recognizing only in extreme situations would that be impracticable, such as on a two- or three-man submersible. The Guide also cautions that "excessive demands should not be made". UN, MSR Guide 16, para. 78. Consistent with the UN MSR Guide conclusion that "[t]he coastal State may be able to claim more than one participant only if, and to the extent that, there is space available," two scientific participants are generally permitted on board U.S. research vessels when space allows. However, there may be occasions when participation is not practical, or, conversely, when more than two may participate. *Accord*, SOONS 189.

[61] This is not authorized by article 249.

[62] Under article 250, all communications concerning marine scientific research projects "shall be made through appropriate official channels, unless otherwise agreed." Soons states that it is always most safe to use diplomatic channels. SOONS 193.

[63] To avoid problems the UN MSR Guide recommends also sending a copy directly to the coastal State scientists involved. UN, MSR Guide 19, para. 90. The Guide also recommends the researching State expressly inform the coastal State involved, after final results and conclusions of a research project have been provided to it, that all obligations related to a specific research project have in its opinion been fulfilled, to avoid invocation of article 246(5) by the coastal State to withhold consent to future projects because of outstanding obligations to it from a prior research project. UN, MSR Guide 20, para. 99.

[64] The UN MSR Guide points out the need for the coastal State to have a single office to process applications for consent and be able to coordinate the request among the relevant government agencies. UN, MSR Guide 9, paras. 42, 43, 46.

The foregoing naturally casts doubt on the value, today, of the LOS Convention to the marine scientific community. That need not be the case.

The Convention is approaching universal acceptance. The Convention entered into force November 16, 1994, for more than 60 States, and is now in force for more than 70 States, including Brazil and Mexico, Germany, Italy and Australia. Many other industrialized countries have indicated they have taken political decisions to adhere to the Convention, including the United Kingdom, Japan, New Zealand and South Korea. Israel has announced that it too is reconsidering adhering to the Convention.[65] Finally, as noted above, the President has transmitted the LOS Convention to the Senate for its advice and consent to accession.

Regarding MSR, the President's Letter of Transmittal stated: "In light of the essential role of marine scientific research in understanding and managing the oceans, the Convention sets forth criteria and procedures to promote access to marine areas, including coastal waters, for research activities."[66] The Secretary of State's Report expanded on the importance of the Convention to MSR:

> The essential role of marine scientific research in understanding and managing the oceans is also secured. The Convention affirms the right of all States to conduct marine scientific research and sets forth obligations to promote and cooperate in such research. It confirms the rights of coastal States to require consent for such research undertaken in marine areas under their jurisdiction. These rights are balanced by specific criteria to ensure that coastal States exercise the consent authority in a predictable and reasonable fashion to promote maximum access for research activities.[67]

So how can those coastal States be convinced to accept and carry out their new duties? More than a decade's experience before the Convention entered into force ~~suggests little hope for doing so outside the Convention regime. However,~~ in at least three ways the Convention helps make real the balance reflected in the Convention's terms? ~~In at least three ways~~

First, States party to the Convention are legally bound by their treaty relationships to comply with the Convention's provisions which by their nature are more explicit than customary law.

Second, U.S. accession to the Convention would finally place it on a level playing field with other countries. Coastal States would no longer have the excuse that they were bound by the Convention and the United States was not - a significant political improvement.

Third, the Convention provides a scheme for resolving MSR disputes with coastal States. This, in and of itself, is an improvement over the present situation. Further, the dispute settlement regime is a major accomplishment. Indeed, it may provide the only way to restrain -- and roll back -- excessive coastal State constraints on the conduct of MSR.

MSR DISPUTE SETTLEMENT REGIME

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[65] 6 State Dep't Dispatch Supplement No. 1, Feb. 1995, at 53.

[66] Sen. Treaty Doc. 103-39, at IV; 6 State Dept. Dispatch Supplement No.1, Feb. 1995, at 1.

[67] Sen. Treaty Doc. 103-39, at VII; 6 State Dept. Dispatch Supplement No.1, Feb. 1995, at 2.

MSR exempted from CDS thus includes the following:

- the general right to regulate, authorize and conduct MSR in the EEZ or on the continental shelf,[70] and
- the discretion to withhold consent for MSR in its EEZ or on the continental shelf if that project:

(a) is of direct significance for the exploration and exploitation of natural resources, whether living or non-living. However, article 246(6) precludes a coastal State from exercising its discretion to withhold consent if the project is to be undertaken on the continental shelf beyond 200 miles, and outside specific areas the coastal State has at any time publicly designated as "areas in which exploitation or detailed exploratory operations focused on those areas" are occurring or will occur within a reasonable period of time;

(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 for economic purposes, and installations and structures which may interfere with the exercise of the rights of the coastal State in the EEZ or on the continental shelf; or

(d) contains inaccurate information communicated to the coastal State, or if the researching State has outstanding obligations to the coastal State from a prior research project.

Interim measures

There are two other provisions favoring the coastal State:

- Article 265, Interim Measures, provides that pending settlement of a dispute authorized MSR will not begin or continue "without the express consent of the coastal State concerned."
- Further, the provisions of article 292 authorizing a tribunal or court to order the prompt release of vessels and crews applies by its terms only to detentions for fishing and pollution violations.[71] Thus there is no guaranteed right of prompt release if a foreign research vessel were detained by the coastal State for violating its MSR laws and regulations.

Remedies for Improper Exercise of Discretion

What aspects of MSR then are subject to dispute resolution? Two important coastal State duties come to mind: The duty of the coastal State to grant consent, in normal circumstances, for MSR projects in the EEZ or on the continental shelf, and the duty to establish rules and procedures ensuring that such consent will not be delayed or denied unreasonably.

Although these may not appear to be very important, it seems that the very existence of these areas provides the researching State leverage over the coastal State that is not implementing the MSR regime consistent with the terms of the Convention.

In a situation where the United States now has very little leverage over recalcitrant coastal States, and there is little incentive for those States to change their laws, regulations or procedures, the mere fact that their non-compliance can be brought before third parties can only be an improvement in the present situation, and should lead to greater conformity with the MSR regime in the Convention.

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[70] *Id.*, article 246(1).

[71] *See id.*, articles 73(2), 220(7) and 226(1)(b); *cf.* article 27(3).

Further, U.S. accession to the LOS Convention would provide the opportunity to try, an opportunity present while the United States remains outside the treaty regime.

Finally, U.S. accession to the Convention would enable the United States to consider establishing a Freedom of MSR Program analogous to the NSC-directed State-Defense Freedom of Navigation Program that since 1979 has helped conform state practice with the navigational provisions of the Convention.[72] Similar results should be sought for MSR.

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[72] *See* ROACH & SMITH, EXCESSIVE MARITIME CLAIMS, Chapter I.

資料 7

NATIONAL SECURITY AND THE CONVENTION ON THE LAW OF THE SEA

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NATIONAL SECURITY AND THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Second Edition
January 1996

Executive Summary

This position paper analyzes the Department of Defense's interests in having the United States become a party to the 1982 United Nations Convention on the Law of the Sea (Convention), as modified by the Part XI Implementation Agreement (Agreement). This new Agreement corrects the flaws in the deep seabed mining regime set out in the Convention that were first articulated by President Reagan in 1982.

Following adoption of the Agreement by the United Nations General Assembly in 1994, the United States became a signatory, paving the way for this country to become a party both to the Convention and the Agreement. The President transmitted the Convention and the Agreement to the United States Senate for its advice and consent to accession and ratification, respectively, on October 7, 1994.

Our principal judgment is that U.S. national security and public order of the oceans are best maintained by a universally accepted law of the sea treaty. Reliance upon customary international law rather than the modified Convention will serve our interests much less effectively, and could result in the United States placing its armed forces in harm's way because these customary principles of law are not universally understood or accepted. The Convention is the best way to reduce the likelihood of situations in which U.S. forces must be used to assert navigational freedoms, as well as the best method of fostering the use of various conflict avoidance schemes which are contained in the Convention.

The Convention, as modified, may not represent an ultimate solution to all oceans policy issues, nor was it intended as such. However, the accomodations embodied in the Agreement and the Convention as a whole, establish an ocean regulatory regime that is clearly in the national security interest of the United States. We now have before us a rare window of opportunity to resolve favorably the vital navigation and other issues, including deep seabed mining, which are addressed by the Convention.

The Department of Defense's key conclusions are:

- Access to the oceans throughout the world, including areas off foreign coasts at great distances from the United States, is vital to U.S. security and economic interests in global navigation, overflight and telecommunications. These interests are best served

by a globally accepted public order of the oceans that minimizes the challenges to and costs of securing such access.

- By providing a comprehensive and stable legal regime for the oceans, a universally accepted Convention, as modified by the Agreement, will promote our strategic goals of free access to and public order of the oceans and the airspace above.

- More than 150 countries, including the U.S., participated in the negotiation of the Convention between 1973 and 1982. We achieved our fundamental objectives of solidifying navigational rights, restraining the growth of excessive maritime claims, and codifying key legal provisions in the areas of environment, fisheries, and sovereign immunity which balance the vital interests of maritime and coastal states. The fisheries provisions were recently supplemented by a newly negotiated Convention on Straddling Fish Stocks and Highly Migratory Fish Stocks that builds upon the Law of the Sea Convention and utilizes its institutions, and that provides new protections for U.S. interests with respect to conservation of high seas fisheries.

- Since 1979, DOD and the Department of State have been actively involved in countering excessive maritime claims through the Freedom of Navigation (FON) program. However, relying solely on diplomatic and operational challenges is less desirable than establishment, through the Convention, of universal norms of behavior and methods of resolving conflict.

- The Agreement Relating to the Implementation of Part XI of the Convention, designed to modify the seabed mining provisions of the Convention, was adopted by the U.N. General Assembly on July 28, 1994. As of December 1995, 125 States have agreed to be bound provisionally by the Agreement, including the United States, all major industrial nations, and most U.S. allies. The Agreement is expected to enter into force by mid-1996. Correction of the Part XI flaws now allows the United States to take advantage of the opportunity to adhere to the modified Convention, realize its national security benefits and permit us to ensure those rights from within the structure of the Convention.

- The Convention entered into force on November 16, 1994. As of December 31, 1995, 83 States are party, including Australia, Brazil, Egypt, Germany, Greece, India, Italy, and Mexico. Key maritime and industrial nations have informally indicated their intention to become party to the Convention and the Agreement once their internal ratification procedures are complete, including: Argentina, Belgium, Canada, Chile, China, Denmark, Finland, France, Ireland, Japan, Republic of Korea, Luxembourg, the Netherlands, New Zealand, Panama, Portugal, South Africa, Spain, Sweden, Switzerland, Ukraine, and the United Kingdom. To maintain American influence in global maritime affairs, the U.S. must become a party to the Convention by May 1996 in order to participate in the selection of members of key institutions created by the Convention, and to derive numerous other benefits.

NATIONAL SECURITY AND THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Second Edition
January 1996

INTRODUCTION

On October 7, 1994, the President transmitted the 1982 United Nations Convention on the Law of the Sea to the United States Senate for its advice and consent to accession. The Department of Defense has long supported the Convention on national security grounds. As Secretary of Defense William Perry stated on July 29, 1994, "The nation's security has depended upon our ability to conduct military operations over, under, and on the oceans. We support the Convention because it confirms traditional high seas freedoms of navigation and overflight; it details passage rights through international straits; and it reduces prospects for disagreements with coastal nations during operations."

U.S. OCEANS POLICY: 1973-1996

Between 1973 and 1982, more than 150 nations participated in the negotiation of the 1982 United Nations Convention on the Law of the Sea. From the U.S. perspective, the Convention was a success, save for the provisions dealing with deep seabed mining. It secured much needed agreement to limit the breadth of the territorial sea to 12 nautical miles (NM), in the face of a large number of nations seeking to establish territorial sea claims of up to 200 NM or more, and struck a positive balance between coastal States and maritime States on issues such as marine pollution, fisheries and mineral resource exploitation, as well as with regard to navigational freedoms through the waters and airspace of exclusive economic zones (EEZs), territorial seas, straits, and archipelagic waters.

However, while United States maritime interests were significantly protected and advanced by the balance struck among these interests, the provisions dealing with deep seabed mining in Part XI of the Convention were not satisfactory. As a result, on July 9, 1982, President Reagan announced that eleven sessions of negotiations had failed to produce a "universal" agreement which accommodated the diverse interests represented at the conference on the full range of oceans uses. Of particular concern to the U.S. and other developed countries were those seabed-mining provisions that deterred development, did not guarantee a decision-making role for the U.S. properly reflecting its interests, permitted amendments to the regime without U.S. consent, mandated transfers of privately owned technology, permitted sharing of benefits with national lib-

eration movements, and failed to assure access for those pioneer investors who sought to develop deep-seabed resources privately.

In 1983, President Reagan issued the U.S. Ocean Policy Statement which declared, in essence, that the United States would follow the non-seabed-mining provisions of the Convention because they fairly balance the interests of the United States and all States with respect to traditional uses of the oceans. At the same time, President Reagan asserted a 200 NM EEZ on behalf of the United States, in addition to confirming the United States exercise of sovereign rights over the resources of the continental shelf.

President Reagan also announced that the United States would "exercise and assert its navigation and overflight rights and freedoms on a worldwide basis consistent with . . . the Convention [but not] . . . acquiesce in unilateral acts of other States designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses." President Reagan's statement reaffirmed the ongoing U.S. practice since 1979 of challenging, through diplomatic and navigational assertions, maritime claims which are inconsistent with the Convention. More than 300 operational challenges and more than 100 diplomatic protests have been made since 1979 under the Freedom of Navigation (FON) Program challenging excessive coastal State claims. Finally, President Reagan issued a Proclamation on December 27, 1988 extending the territorial sea of the United States and its possessions from 3 to 12 NM, the limit authorized by the Convention.

Virtually all major maritime and industrialized nations declined to become parties to the Convention in its original form. Nevertheless, the Convention entered into force on November 16, 1994, one year after the sixtieth State deposited its instrument of ratification or accession. As detailed below and in ***Tab B***, however, there has been a rapid increase in the number of States joining the Convention since the U.N. General Assembly adopted the 1994 Agreement modifying the Convention's objectionable seabed mining provisions. As of December 1995, the Convention has 83 parties (82 independent States and the Cook Islands).

SCOPE OF THE CONVENTION

The text of the Convention is the result of fifteen years of informal and formal negotiations in which the United States was an active and influential participant. Opened for signature on December 10, 1982, the Convention consists of 320 articles and nine annexes, treating virtually every topic of importance to coastal and maritime States. Among the subjects covered: breadth of the territorial sea, contiguous zone, exclusive economic zone (EEZ), and continental shelf; rights of transit, innocent and archipelagic sea lanes passage; right of States to conduct marine scientific research; a balancing of rights be-

tween fishing States and coastal States concerning management of fish stocks, as well as empowerment of regional fishing compacts; establishment and apportionment of responsibility between the coastal States and flag States to take measures to protect the marine environment; creation of special regimes for the management and protection of marine mammals, anadromous (salmon) and highly migratory (tuna) fish species; and establishment of a broad range of dispute settlement options so that universal participation would be reasonably assured. However, as noted above, Part XI of the Convention established a regime governing deep seabed mining which was objectionable to the United States and other industrialized countries.

EFFORTS TO REFORM THE CONVENTION

In 1990, then U.N. Secretary-General Javier Perez de Cuellar convened informal meetings in New York to begin negotiation of a multilateral instrument which would correct the objectionable portions of Part XI. **The objective was universal adherence to the Convention.** Approximately 30 developing and developed countries, including the United States, participated in the discussions which resulted in adoption by the U.N. General Assembly of an Agreement Relating to Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea (Agreement), on July 28, 1994.

The Agreement modifies the objectionable provisions of Part XI and related Annexes to create a new deep seabed mining regime. The substantial modifications accomodate the objections of the United States and other industrial nations. It provides a stable and internationally recognized framework for mining to proceed in response to any future demand for minerals.

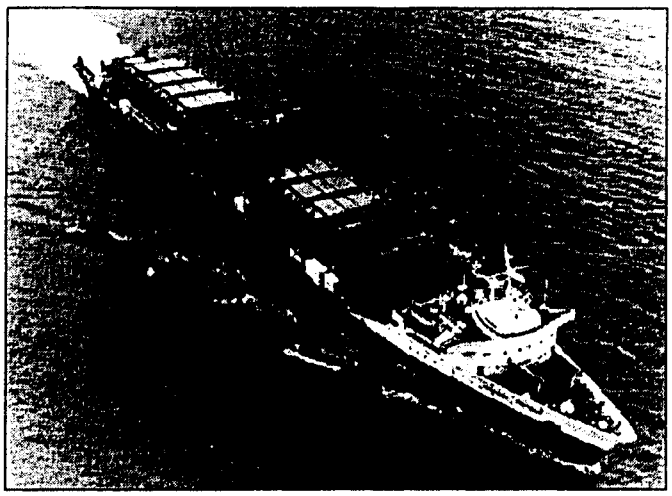
As detailed in ***Tab B***, 125 entities (123 independent States, the Cook Islands and the European Economic Community) have now agreed to apply the Agreement provisionally, including the United States and other major industrial nations. The Agreement has been provisionally applied since November 16, 1994, and is expected to enter into force by mid-1996 for States that have consented to be bound.

VITAL NATIONAL SECURITY INTERESTS ARE ADVANCED BY THE UNITED STATES BECOMING A PARTY TO THE CONVENTION

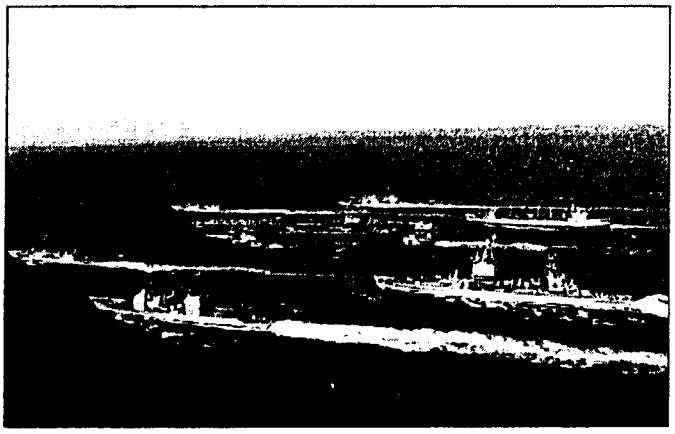
National security interests have been a critical component of the 25 year effort to achieve a comprehensive Convention. They were at the heart of the Reagan, Bush and Clinton Administrations' policy of finding a satisfactory solution to the Part XI problem that would enable the United States to become party to a widely ratified Convention.

The national security interests in having a stable oceans regime are, if anything, even

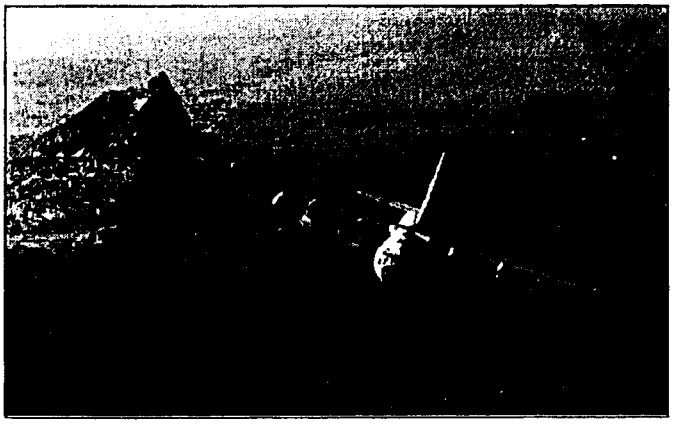
LAW OF THE SEA



DOD's ability to maintain forward presence depends on its ability to sustain military operations around the globe. The vast majority of logistics support and equipment travels on both public vessels or under DOD charter arrangements. Effective utilization of this scarce sealift capacity, is dependent upon open sea lanes of communication so that this shipping can enjoy unimpeded and expeditious passage.



Carrier Battlegroups remain one of the most flexible instruments which the National Command Authority can use as an instrument of diplomacy or to provide potent and flexible power if diplomatic efforts fail.



The regime of transit passage extends to surface and submerged navigation of recognized international straits as well as overflight. The Strait of Gibraltar, is the gateway for the flight of many U.S. military aircraft to and from bases in the Eastern United States to littoral areas in the Mediterranean as well as the Middle East and Turkey. The right of overflight is exercised daily in routine sustainment operations as well as during emergency logistics resupply efforts (Israel, 1973) and in combat situations when land-overflight rights have been denied (Raid on Libya, 1986).

Figure 1.

more important today than in 1982, when the world had a roughly bipolar political dimension and the U.S. had more abundant forces and overseas bases to project power wherever needed. ***[see Figure 1]***

The navigational rights and freedoms embodied in the Convention are in daily use by commercial maritime and air traffic, and the naval and air forces of the United States and its allies. The core rights assured by the Convention include the following:

- ***Innocent Passage.*** This right of ships to continuous and expeditious passage not prejudicial to the peace, good order, or security of coastal States is the primary right of nations in foreign territorial seas. Naval vessels rely on this right to conduct their passage expeditiously and effectively. The Convention plays a special role in codifying the customary right of innocent passage for ships on the surface and contains an exhaustive list of the types of shipboard activities which are forbidden. It also describes the extent of, and limitations on, the right of coastal States to regulate and suspend innocent passage.

- ***Transit Passage.*** The Convention protects and preserves free transit on, under and over international straits. Free transit of straits is essential to the global mobility of U.S. forces and U.S. trade. More than 135 straits, which otherwise would have been severely restricted as a result of the extension of the territorial seas to 12 NM, are open to free passage under the Convention's regime of transit passage. Less restrictive than innocent passage, ships and aircraft engaged in transit passage may pass through straits continuously and expeditiously in their normal mode. Submarines may pass through straits submerged, naval task forces may conduct formation steaming, aircraft carriers may engage in flight operations, and military aircraft may transit unannounced and unchallenged. Three significant conflicts illustrate the importance of the right to transit straits freely:

  - During the 1973 Yom Kippur War, overflight of the Strait of Gibraltar enabled U.S. military aircraft to conduct emergency resupply of Israel following the denial of overflight of land territory by certain NATO Allies.

  - Following the State-sponsored terrorist attack on U.S. armed forces in Berlin, U.S. military aircraft overflew the Strait of Gibraltar to conduct a raid on Libya on April 14, 1986, after certain NATO Allies denied the U.S. permission to overfly their land territory.

  - Before and during the Persian Gulf War, the U.S. and other coalition naval and air forces traversed the critical choke points of Hormuz and Bab el Mandeb. The right of free transit set forth in the Convention provided an authoritative basis for common allied positions and action. In preparation for Operation Desert Storm, 3.4 million tons of dry cargo and 6.6 million tons of fuel had to be transported to U.S. and allied forces in the Gulf. Ninety-five percent of the cargo moved by ship through the straits. ***[see Figure 2]***

- ***Archipelagic Sea Lanes Passage.*** The right of transit by ships and aircraft through archipelagos, such as the Philippines and Indonesia, can have a significant impact on the ability of military forces to proceed to an area of operations in a timely and secure manner. The Convention's guarantee of archipelagic

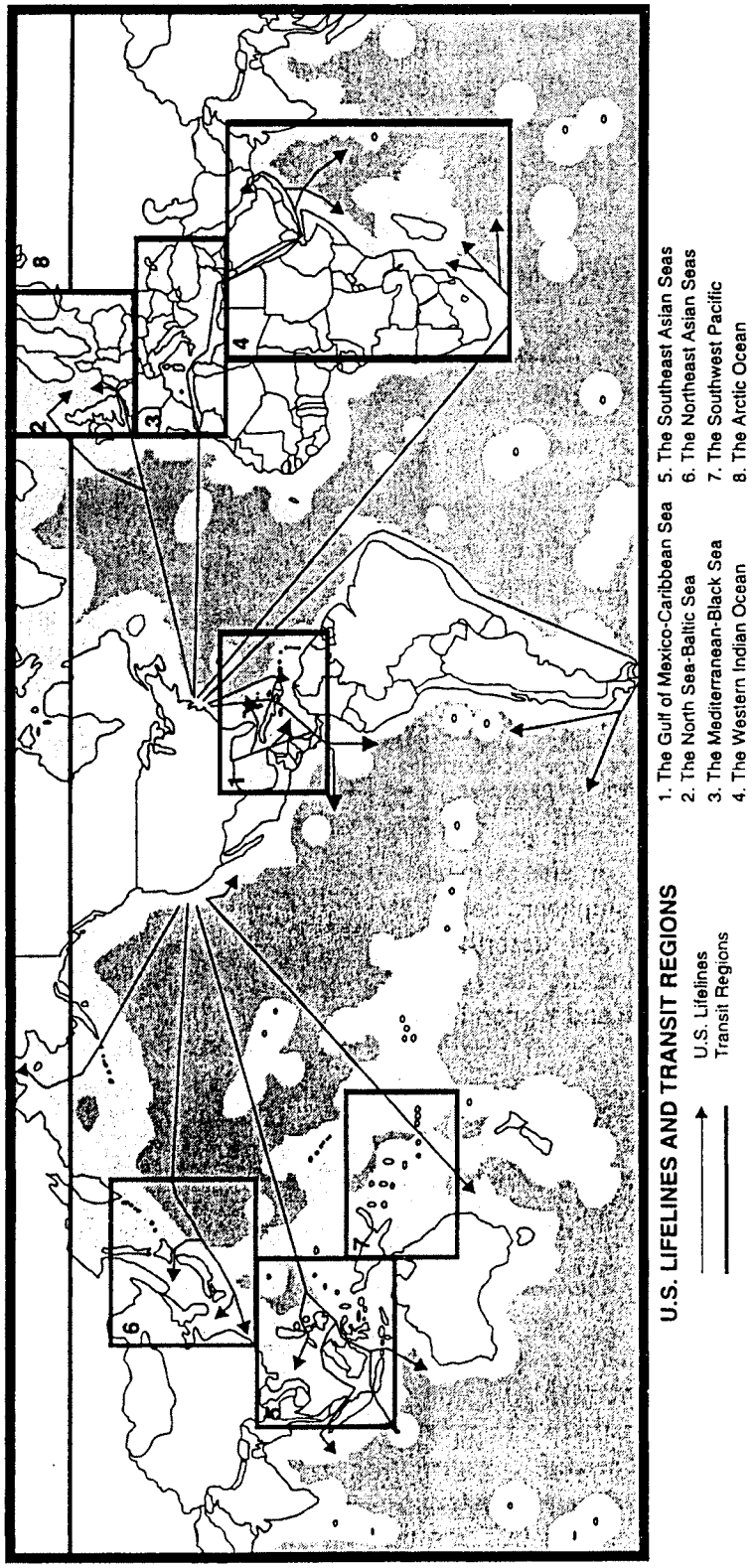


Figure 2. Straits Chart

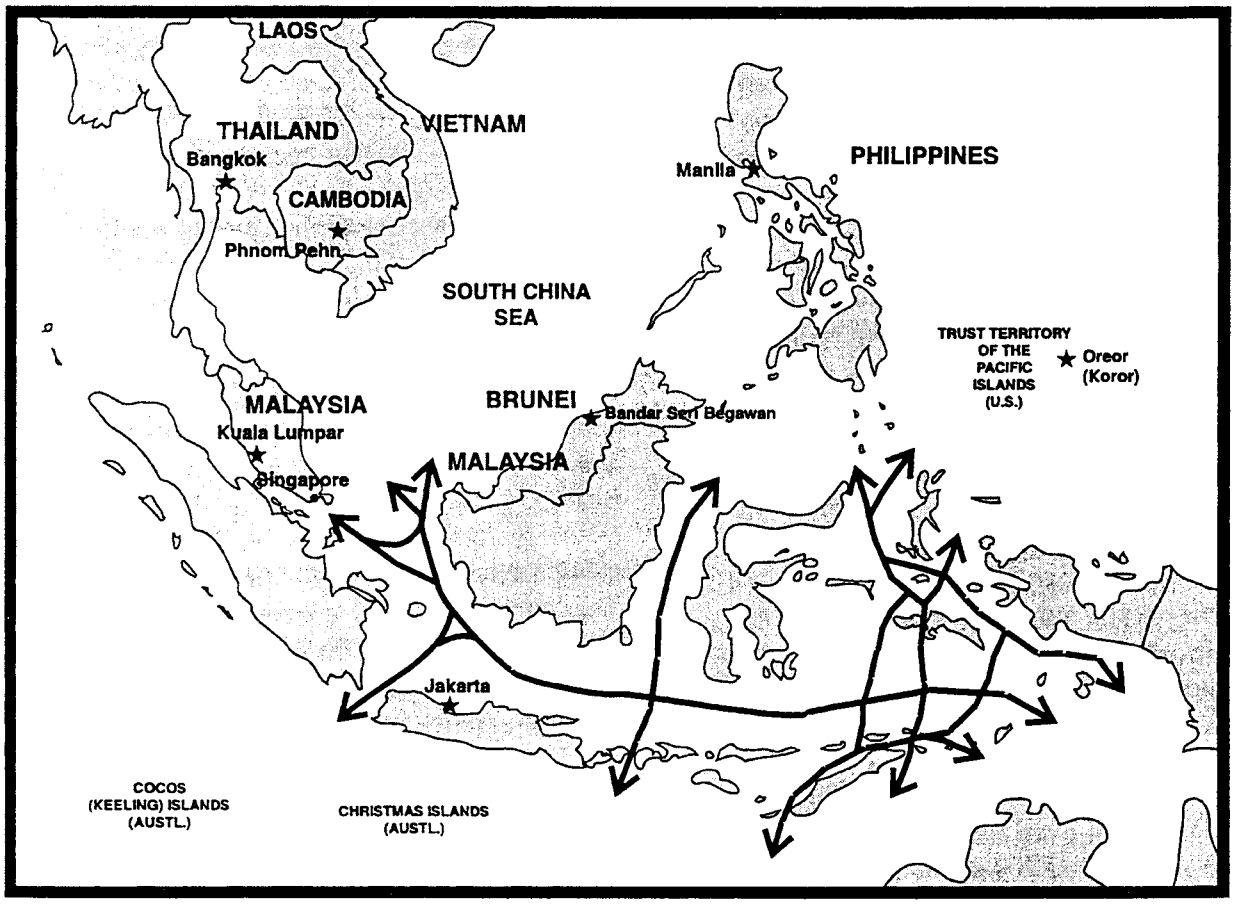


Figure 3. The Indonesian Archipelagic Crossroads.

The straits in the Indonesian Archipelago are a major chokepoint in the most direct and cost-effective maritime route linking the Pacific and Indian Oceans. Unimpeded transit through straits and sea lanes under the regime of archepelagic sea lanes passage is critical to the movement of trade goods, strategic minerals, military forces, and energy supplies to sustain the U.S. economy.

sea lanes passage permits transit in the normal mode between one part of the high seas or EEZ and another through the normal routes used for international navigation or through sea lanes approved by the International Maritime Organization (IMO). To date, there has been a general trend toward compliance with the Convention by nations claiming archipelagic status. However, the U.S. opportunity to influence the actions of archipelagic States which choose to designate sea lanes, and to ensure compliance with the Convention's requirement to submit sea lane proposals to the IMO, would be diminished as a non-party to the Convention. *[see Figure 3]*

- ***Freedoms of Navigation, Overflight, and Other Uses in the EEZ.*** A third of the world's oceans, including entire seas such as the Mediterranean, the Red Sea, and the Persian Gulf, are within 200 NM of the coast, and thus within the permissible limits of the EEZ. We are separated from most places in the world by the EEZ of at least one other State. The Convention expressly preserves in the EEZ the high seas freedoms of navigation, overflight, laying and maintenance of submarine cables and pipelines, and related uses. Respect for these freedoms by coastal States around the world is indispensible to our global mobility, and to our national security, trade and communications. Most coastal States have already implemented their right to an EEZ, including rights with respect to regulation of pollution from ships navigating in the zone. The challenge is to ensure that they respect the limitations on those rights set forth in the Convention. Should we fail, our global mobility will be prejudiced, and the cost of securing mobility by other means could escalate dramatically in some places and become prohibitive in others.

- ***High Seas Freedoms.*** The Convention makes an important contribution by defining the types of activities which are permissible beyond territorial seas. Consistent with the principle of "due regard" for the rights of other users, U.S. forces remain free to engage in task force maneuvering, flight operations, military exercises and surveys, surveillance and intelligence activities, telecommunications and space activities, and ordnance testing and firing.

- ***Sovereign Immunity of Warships and Other Public Vessels and Aircraft.*** The concept of sovereign immunity of warships and other public vessels has come under increasing assault by coastal States wishing to circumscribe this historic right on the basis of security or environmental concerns. The Convention contains a vitally important codification of the customary law principle that naval auxiliaries are entitled to the same immunity from enforcement jurisdiction by non-flag States as warships enjoy. To support military operations around the globe, there must be the assurance that military vessels and their cargoes can move freely without being subject to levy or interference by coastal States. The Convention also makes great strides in harmonizing environmental and security concerns by assigning to the flag State the responsibility to adopt appropriate measures for sovereign immune ships and aircraft to respect the marine environment.

Recent events in North Korea, Haiti, Rwanda, Iraq and the Balkans serve as important reminders that we still live in an uncertain and dangerous world. Threats to world order and U.S. interests in the post-

Cold war era include:

- Ethnic rivalry and separatist violence within and without national borders;
- Regional tensions in areas such as the Middle East and Northeast Asia;
- Humanitarian crises of natural or other origin resulting in starvation, strife, or mass migration patterns;
- Conflict over mineral and living resources including those that straddle territorial or maritime zones; and
- Terrorist attacks and piracy against U.S. persons, property, or shipping overseas or on the high seas.

These challenges are considerably different from those which dominated thinking in the era following World War II. What has not changed, however, is that many U.S. economic, political, and military interests are located far away from the United States. The United States has always been a maritime nation and we must have substantial air and sealift capabilities to enable our forces to be when and where they are needed. **Assurance that key sea and air lines of communication will remain open as a matter of international legal right and will not become contingent upon approval by coastal or island nations is an essential requirement for implementing our national security strategy.**

Global mobility is the key to deterrence, and deterrence is the key to avoiding conflict. Without international respect for the rights and freedoms of the navigation and overflight set forth in the Convention, exercise of our forces' mobility rights would be jeopardized. Disputes with littoral States would delay action and be resolved only by protracted political discussions, frequently entailing demands for expensive concessions on our part. The response time for U.S. and allied/coalition forces based away from potential areas of conflict would lengthen. Deterrence would be weakened — particularly when our coalition allies do not have sufficient power projection capacity to resist illegal claims. Forces likely would arrive on the scene too late to make a difference, affecting our ability to influence the course of events consistent with our interests and treaty obligations. Responses to aggression must be swift and effective. For example, the rapid insertion of forces by sea and air in the Fall of 1994, in response to troop deployments by Iraq, deterred aggressive behavior and demonstrated the importance of maintaining our mobility through key choke points. *[see Figure 4]*

U.S. accession will substantially enhance the authoritative force of the Convention. The more authoritative the Convention, the more likely it is to guide and restrain the behavior of other States. For example, provisions in the Convention have already proven invaluable in resolving the following issues which have strong national security implications:

- Bilateral discussions with the former Soviet Union following the Black Sea "bumping" incident, resulting in the US-USSR Uniform Interpretation of the Rules of International Law Governing Innocent Passage Through the Territorial Sea, signed at Jackson Hole, Wyoming on September 23, 1989;

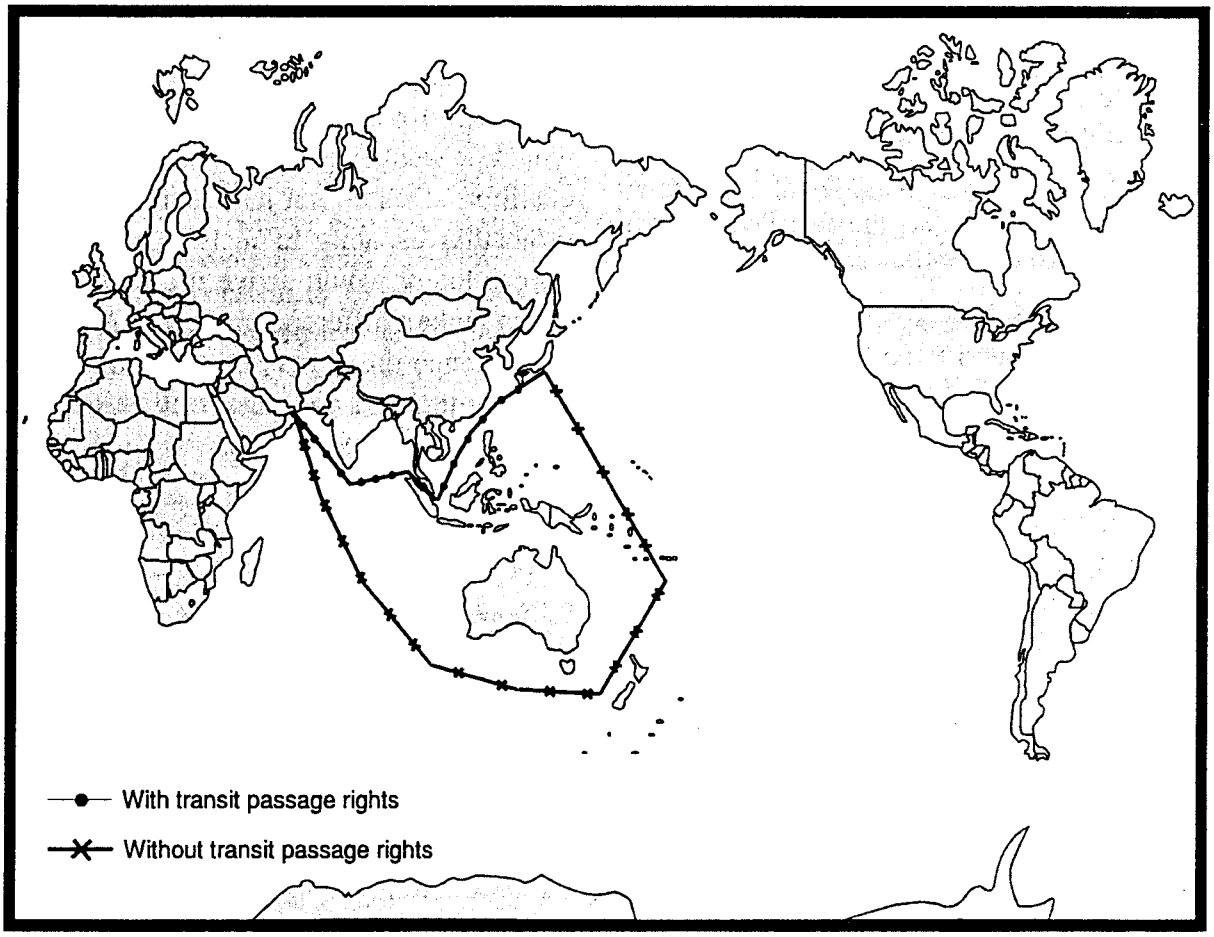


Figure 4. Transit Passage: Battle Group Cost and Time Savings

If prevented from transiting through the Indonesian Archipelago and the Malaccan Straits, a battle group transiting from Yokosuka, Japan to Bahrain would have to reroute around Australia. Assuming a steady 15 knot pace, the six ship battle group (all consuming conventional fuel) would require an additional 15 days to transit an additional 5,800 nm. Additional fuel cost would be approximately $7.0 million.

- Technical discussions between U.S., Indonesian and Philippines officials concerning archipelagic sea lanes passage through the Indonesian and Philippines archipelagos; and
- Technical discussions with other major maritime powers regarding regulations pertaining to passage through key straits, rules for establishing straight baselines, and resolution of maritime boundary disputes.

A universal Convention offers considerable promise because of the flexibility which it provides to States to resolve disputes over conflicting uses of the sea through the employment of any of four dispute resolution mechanisms. Even though the United States and certain other States will exercise their right to exclude military activities from compulsory jurisdiction, as a party we can use these mechanisms to restrain excessive claims by foreign coastal States because they usually affect non-military activities as well. The large number of "hot spots" on the globe (Bosnia, North Korea, the Middle East, the Persian Gulf, and the former Soviet Union) underscore the need for additional methods of resolving conflicts.

PROTECTION OF THE ROUTES OF INTERNATIONAL TRADE, ACCESS TO CRITICAL OIL AND GAS RESOURCES, AND THEIR MODES OF TRANSPORT, DEPEND UPON A STABLE OCEANS REGIME IN WHICH NAVIGATIONAL RIGHTS ARE ASSURED

To be secure and influential in the international political arena, the United States must sustain strong economic growth. In the 13 years since the United States rejected the Convention's seabed mining regime, our country has become more economically dependent than ever upon access to global markets. U.S. economic growth is closely linked to the world economy as a whole and the majority of that trade is carried on and over the world's oceans. Seaborne commerce exceeds 3.5 billion tons annually and accounts for 80 percent of trade among nations. Universal adherence to the Convention will provide the predictability and stability which international shippers and insurers depend upon in establishing routes and rates for global movement of commercial cargo.

When we think about strategic mobility, we often overlook the interdependencies between commercial transportation and our standard of living. Commercial ships (unlike warships) do not have the ability to resist illegal action by coastal States. Thus, they are the usual victim when rights to free and unencumbered access to the high seas, foreign territorial waters, archipelagic waters and international straits are threatened or restricted.

The "Tanker War" between Iran and Iraq during their 1980-88 conflict is a good example of how illegal activities on the part of coastal States toward non-belligerent shipping can have a direct and lasting effect on the United States strategic interest in assuring the movement of petroleum from the Persian

Gulf to Western economies (including our own). The following statistics are telling:

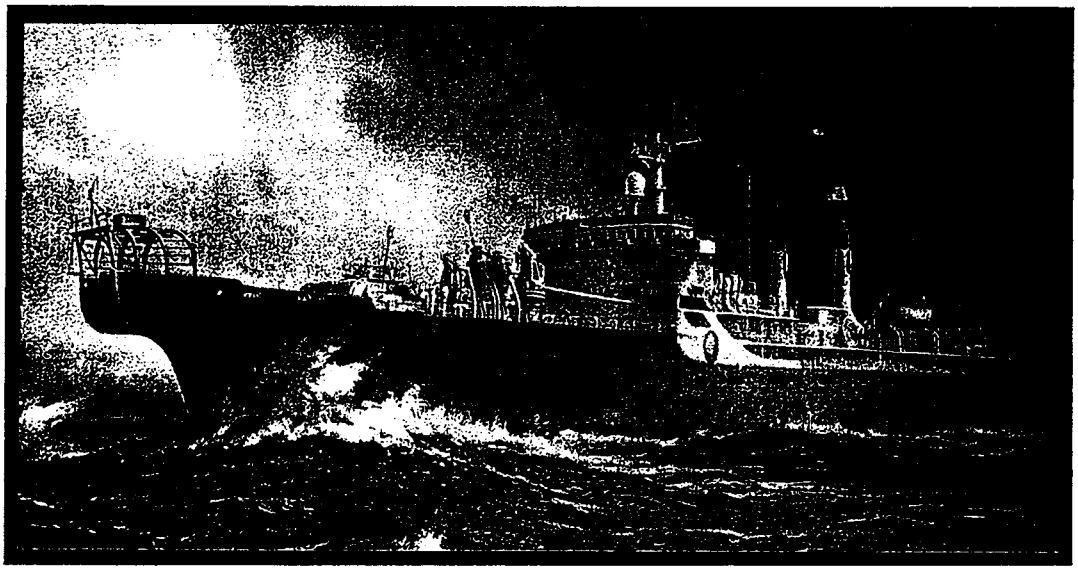
- In the 8 year conflict between Iran and Iraq, 543 ships were attacked, mostly in international waters.
- 53 U.S. lives were lost in attacks on U.S. military vessels; a total of 200 merchant sailors were killed.
- The majority of ships attacked flew the flags of States unconnected with the conflict between Iran and Iraq.
- Over 80 ships were sunk or declared a total loss resulting in over $2 billion in direct losses to cargo and hulls.
- Hull insurance rates increased 200 percent worldwide. Of course, these rates were passed on to consumers in the form of higher prices.
- Fears that the tanker war would result in serious disruption of available oil supplies pushed the cost of oil supplies from approximately $13 to $31 per barrel. Total cost to the world economy was projected by some to exceed $200 billion.
- No plausible combination of decreased domestic consumption or conservation will reverse current U.S. dependence on Persian Gulf oil — now in the vicinity of 9.8 million Bbls per day.

The important point is that upholding free access through critical maritime and aviation choke points has great significance for both the US and world economy as a whole. The LOS Convention would not have prevented the Iran-Iraq war. However, to the extent that the Convention's norms are observed on a daily basis by States bordering critical choke points, the US and world economies can remain free of economic blackmail.

The reality that U.S. economic interests are global underscores the need to uphold the transit rights under a widely accepted and comprehensive international legal regime, as provided by the Convention. Its dispute resolution provisions and its fixed rules for determining the breadth and access to maritime resources in the EEZ and continental shelf all support the "stability of expectations of investment bankers, insurance companies and others who underwrite and support shipping, offshore exploration and drilling and many other activities at sea."

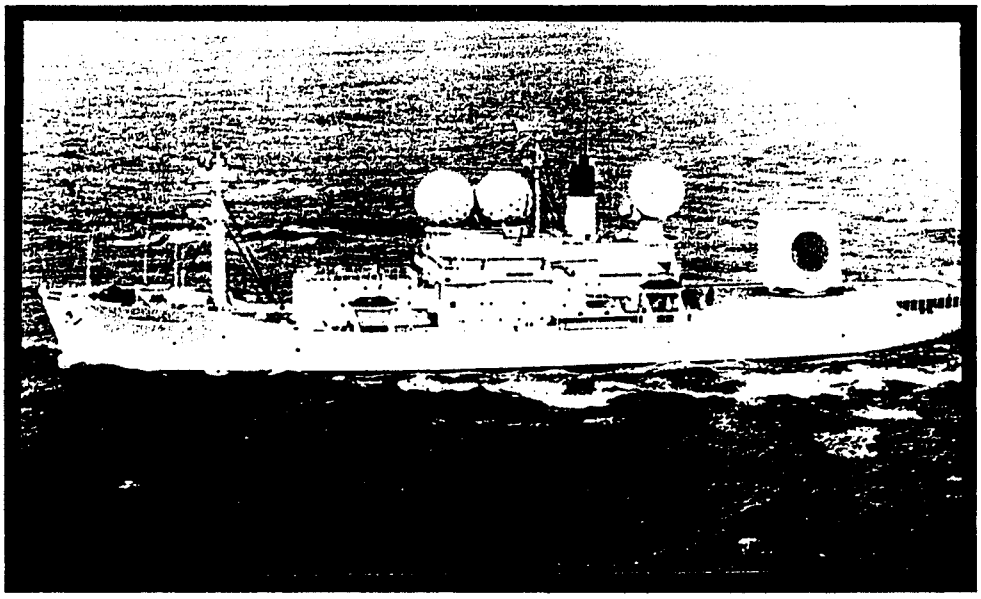
U.S. ECONOMIC INTERESTS AND MILITARY COMMAND AND CONTROL NEEDS DEPEND ON CONTINUED USE AND ACCESS TO HIGH SEAS AREAS FOR TELECOMMUNICATIONS

We are now witnessing a new global information age. Our role in the expanding global information market, and our economic dependence on that market, is immense and growing. To serve that market, investment in new undersea fiber-optic cable by American and other companies is expanding at a rate measured in billions of dollars. Particularly as competing uses of the sea and seabed expand, it is important that we maintain and



The LOS Convention codifies the right of nations to lay submarine telecommunications cables on the high seas and foreign EEZs. Use of the seas to establish fiber optic links has increased the access and quality and decreased the cost of intercontinental telecommunications from both a commercial and military standpoint.

Figure 5.



DOD has invested heavily in space based telecommunications systems which are, for the most part, in orbit over the oceans. This ubiquitous system ensures US forces are in constant contact with headquarters elements and decreases reliance on foreign frequency clearance or basing rights.

strengthen the perception of States that the cables are inviolable, and that adequate international and national procedures are available to deter interference and compensate for losses. The Convention expressly protects the freedom to lay and maintain cables beyond the territorial sea of any State and strengthens the legal protections from interference both in international tribunals and foreign courts.

Our defense strategy relies upon collection, assimilation, and retransmission of information. The great successes of US forces during the Persian Gulf conflict as well as the effectiveness of the recent NATO bombing campaign in Bosnia-Herzegovina testify to the importance of maintaining effective command, control, and communications systems (C^3). The use of submarine cables and maritime-based satellite telecommunications are the glue which holds our vast information system together. The high seas freedoms recognized in the Convention play a key role in DOD's continued use of undersea cables for national security purposes. ***[see Figure 5]***

Nine articles in the Convention protect the right of States to lay, maintain, and use submarine cables and pipelines on the seabed, including foreign EEZs and continental shelves as well as the international seabed area beyond. In archipelagic waters, States retain the right to use and maintain cables and pipelines which are currently in operation. This broad authority to lay and maintain submarine cables has proven to be of vital importance to the Defense Communications System. The trend in DOD communications roughly parallels the exponential growth in the commercial use of submarine fiber-optic cable for intercontinental telecommunications traffic.

The Convention's guarantees in this area are critical, since the Department of Defense currently relies on fiber-optic cable for approximately sixty percent of its telecommunications needs, and on other systems (satellite, microwave, and copper cable) for the remaining forty percent. Some of these fiber-optic systems are owned outright by DOD, and others are leased for exclusive DOD use. The reliability and low cost of fiber-optic communications enables DOD to have diversity in communications pathways and minimum periods of outage. It also frees up valuable satellite capacity for mobile and contingency-related ground and maritime operations.

THE LOS CONVENTION PROVIDES CLEAR AND CONCRETE RULES FOR DETERMINING THE LEGALITY OF MARITIME CLAIMS

One of the principal accomplishments of the LOS Convention is the establishment of a clear set of maritime zones: the territorial sea, contiguous zone, EEZ, and continental shelf, which uphold the resource and environmental interests of coastal States, balanced against the interest of maritime and trading

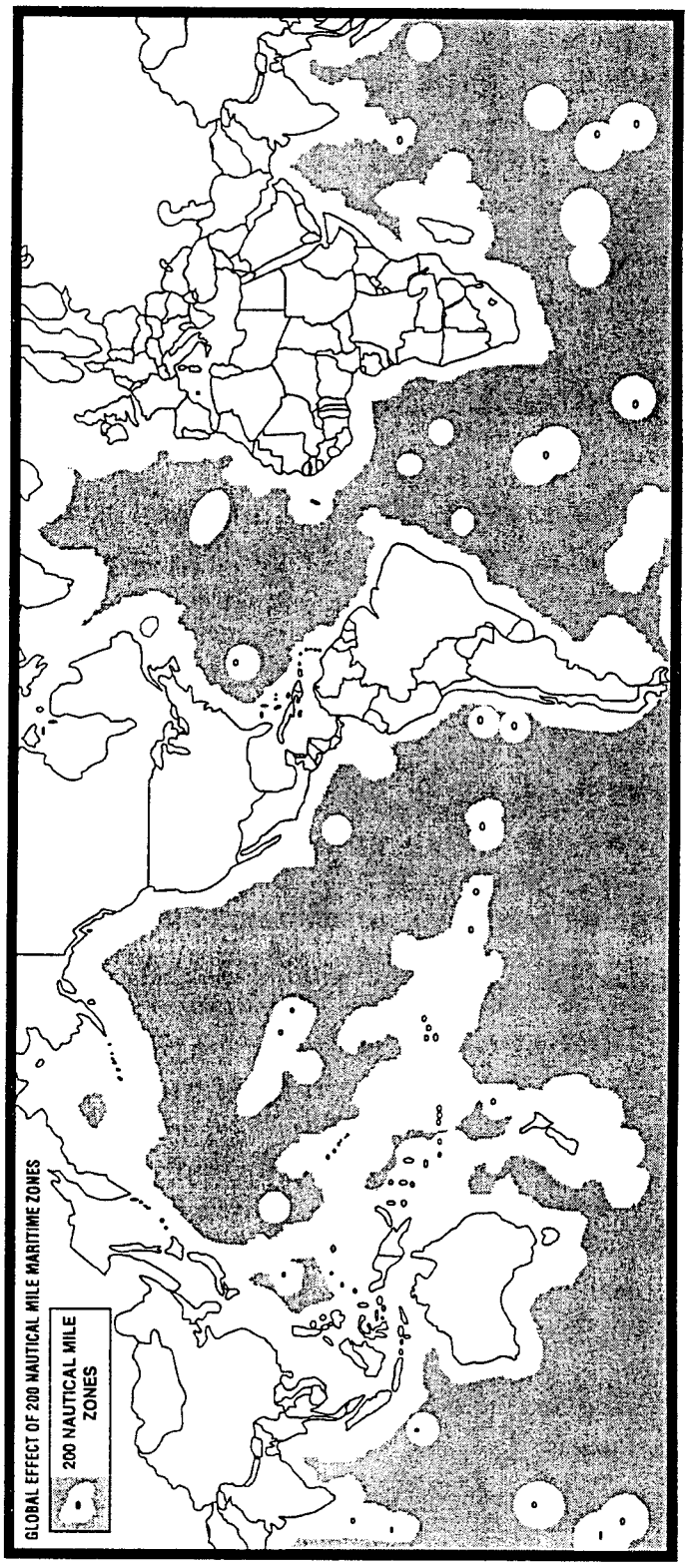


Figure 6. Jurisdictional Creep

The LOS Convention contains a key agreement between coastal States and maritime states that coastal States would have control of resources in the 200 NM EEZ in exchange for broad navigational rights beyond the 12 NM territorial sea. This agreement reversed a disturbing trend by coastal States to make 200 NM, or greater, territorial sea claims. As of July 1994, 19 States still claim territorial seas in excess of 12 NM. The chart shows the impact which excessive maritime claims have on navigational freedom. The white areas would come under coastal state territorial control if territorial seas were extended to 200 NM.

nations in open access to the oceans for navigation and overflight purposes. This careful balance of maritime zones appears to have reversed a disturbing trend known as "jurisdictional creep," whereby many coastal States claimed territorial seas of up to 200 NM in order to create a monopoly over coastal resources or for purposes of security. Despite the favorable current trend influenced by the Convention, excessive maritime claims may not disappear altogether, even if the United States becomes a party to the Convention. **However, as an insider, the U.S. certainly would be in a much stronger and more authoritative position to invoke the Convention's geographic and functional limits on coastal State authority over offshore areas.** Moreover, U.S. participation would all but ensure universality of the Convention, essentially guaranteeing that the provisions of the Convention will continue to be viewed as ***the*** governing rules of international law.

As a party to the Convention, the United States also will be entitled to make use of the dispute resolution apparatus to contest excessive claims. Since 1979, the United States has unilaterally contested excessive coastal claims diplomatically and operationally through the Freedom of Navigation (FON) Program. Those actions may still be required to enforce the norms of the Convention. However, to the extent we can decrease reliance upon FON challenges through enforcement of the Convention by diplomatic and legal means, the United States reduces political, military, and other costs. Also, because the Convention provides rules and procedures for fixing maritime boundaries, there should be a corresponding reduction in tension. ***[see Figure 6]***

THE LOS CONVENTION HELPS TO DEFUSE REGIONAL DISPUTES IN LITTORAL AREAS AND LIMIT THEIR EFFECT

The end of the Cold War has shaken conceptions about the foundations of international peace and security. As witnessed by recent regional conflicts in the Balkans and the former Soviet Union, and by ethnic rivalries in Africa, the nature of conflict is changing. The question today is less related to ideology; instead, actual and potential conflicts relate to who people are, where they will live, and what they will receive. Now and in the future, regional conflicts of one sort or another relating to religion, nationalist sentiments, etc., have the capability to outstrip the ability of the U.N. or regional security apparatus to find solutions. The conflicting claims of Greece and Turkey in the Aegean, the conflicting claims of six nations to the Spratly Islands, and the conflicting claims of five nations to the seabed resources of the Caspian are three regional areas which concern us because of the potential that any one of these situations may result in conflict. With respect to the Spratly Islands and the Aegean, there have been confrontations in the past.

Greece's statements that it intends to assert

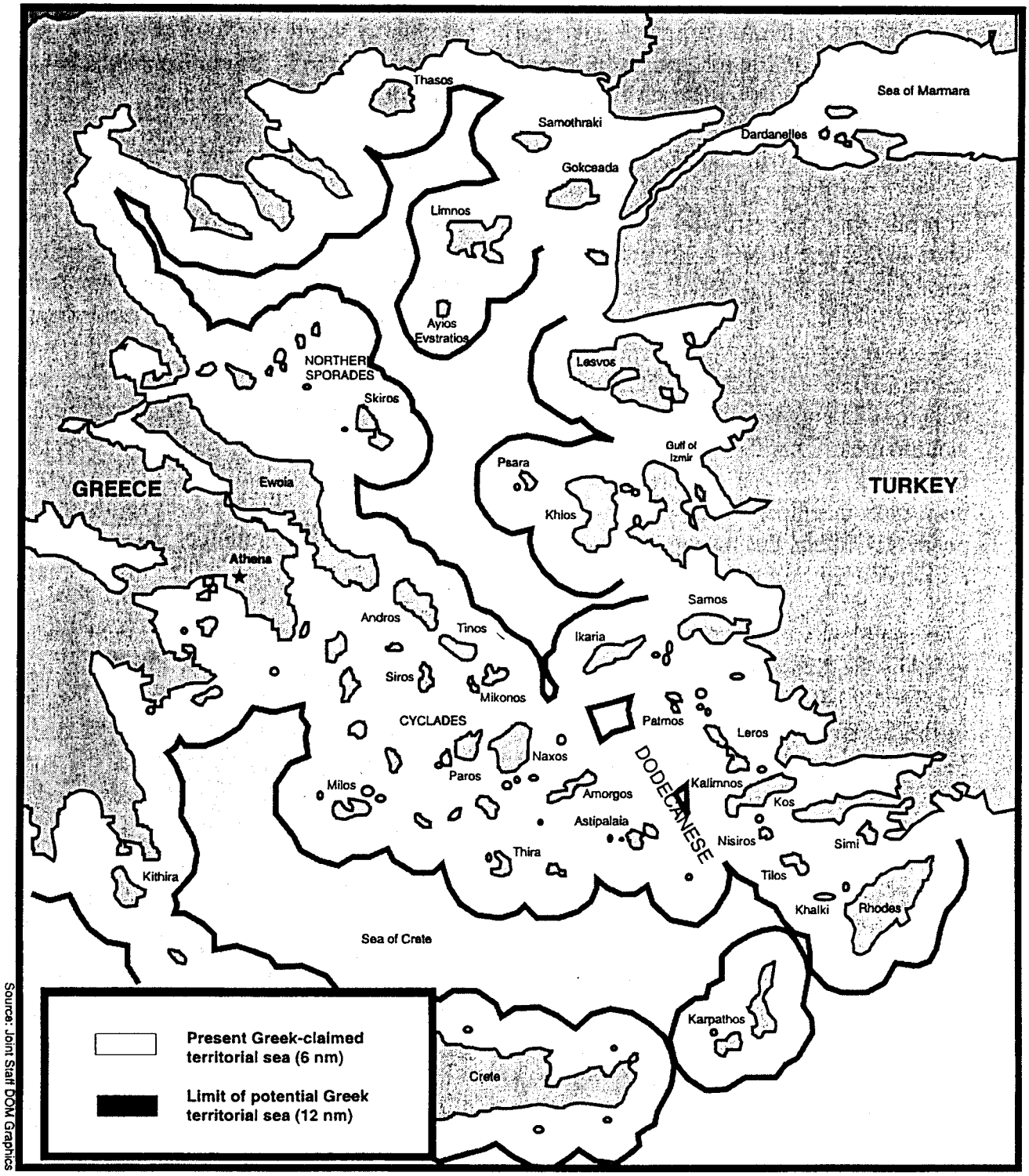
its right to extend its territorial sea (and airspace) claims in the Aegean has been a continuing source of friction, since this would reduce high seas areas now used by the Turkish Navy and others, and because Greece has also said that it will seek to limit passage through the Aegean's many island straits. Complicating the territorial sea and straits issue is the lack of any serious current proposals to deal with the delimitation of the Aegean's continental shelf. While little progress to resolve the Aegean dispute is likely unless Greece and Turkey accept the inevitability of bilateral negotiations, the LOS Convention provides both Greece and Turkey the framework of normative rules and dispute resolution machinery which can be used to positively affect the course of events in a region that has been troubled for many years.

The complexity of the Aegean dispute is rivaled by the diversity of conflicting claims in the Spratly Islands. U.S. policy with respect to the Spratlys is to take no position on the individual merits of any particular territorial claim to any of the rocks or islands. However, we have made it clear that the U.S. expects all claimants to refrain from engaging in any claims-related activities that would interfere with the navigation and overflight rights of maritime States in the South China Sea. Since the U.S. announced this policy on May 10, 1995, there has been a decline in the number of incidents in the region. And, following China's announcement that it would respect and apply the LOS Convention to the maritime aspects of the Spratlys dispute, there have been a series of meetings between the claimants. For the time being, at least, the potential application of LOS principles to the resolution of the Spratlys dispute has helped to stabilize the situation.

The rules set forth in the Convention have direct and indirect application to the critical issues arising from the exploitation and shipment of Caspian Sea oil to market. The first major group of issues involves delimitation of the Caspian Sea's oil and gas resources and fisheries among the five nations which have borders on the Caspian. Secondary issues relate to movement of the oil and gas through the Turkish Straits. The States concerned are considering the application of LOS principles to resolve issues of oil and gas rights and the rights of littoral communities to exercise freedom of navigation and utilize the Caspian's important fisheries resources. The Convention's rules regulating the creation of routing measures also have been used to enhance the safety of navigation of oil tankers passing through the Bosporus, the Sea of Marmara, and the Dardanelles (also known as the Turkish Straits), which is otherwise governed by the 1936 Montreaux Convention.

The Aegean, Spratly and Caspian disputes are three real-world examples where the principles embodied in a universal LOS Convention are being used to enhance international peace and security by defusing part or all of a dispute. This has already taken place in the Black Sea, where the U.S. and the U.S.S.R. used the rules of the Convention to resolve their disagreement concerning innocent passage rights in 1989, despite the fact that nei-

Figure 7.



Source: Joint Staff DOM Graphics

Completing claims to the Aegean's continental shelf, Greece's statements that it will establish passage corridors through the Aegean and that it will extend its territorial sea have resulted in past confrontations.

FIGURE 8.

A saltwater lake, the Caspian Sea's riches are being claimed by five nations. The transshipment of those oil and gas resources have unmasked new problems in which LOS principles are helpful.

ther country was then a party to the Convention. As history unfolds, the usefulness of the LOS Convention to resolve these disputes and others will become more apparent. It is fair to say that the use of comprehensive LOS provisions dealing with maritime boundaries, maritime zones, and rights of competing maritime users are fundamental to finding a basis for future agreement in trouble spots around the globe. ***[Figures 7 & 8]***

THE LOS CONVENTION ESTABLISHES IMPORTANT BENCHMARKS FOR PROTECTING THE MARINE ENVIRONMENT WHILE PRESERVING OPERATIONAL FREEDOMS

The Department of Defense is committed as a matter of policy to the norms established by Part XII of the Convention, which affirms that "States have the obligation to protect and preserve the marine environment." Although the Convention clearly provides for navigational access to the world's oceans, the practical ability of our naval forces to gain access to foreign ports and bases for distant operations and to resist varying types of coastal State claims is heavily influenced by the perceptions of coastal States that our warships and other public vessels are being operated in an environmentally responsible manner. The goal of our environmental program is to ensure that our shore installations and operational commands worldwide are able to accomplish their assigned missions while meeting our environmental obligations. To meet this overall goal of environmental compliance and to maintain credibility with the world community at large, the military departments have made a heavy commitment of resources to:

- Participate actively in the international organizations (such as the IMO) which adopt and promulgate realistic procedural and substantive environmental standards affecting maritime operations;
- Modify our operational practices and acquire modern waste processing equipment in order to mitigate the environmental impacts of military operations;
- Conduct extensive research to develop technical solutions to the problems of processing shipboard wastes and development of special coatings and industrial processes to further limit sources of pollution from ship hulls.

The Department will continue to be proactive in the area of environmental protection as a matter of national law and policy. Nevertheless, to resist excessive maritime claims and to maintain the principle of sovereign immunity (guaranteed in Article 236 of the Convention) will require a commitment to environmental protection, as well as sound management of environmental hazards.

The Convention solidifies the leadership position which the U.S. exercises in the IMO, based in London. The United States and all major maritime powers actively participate in the IMO, the institutional sponsor for a number of other related conventions, including:

- The 1973 Convention and 1978 Protocol for the Prevention of Pollution from Ships (MARPOL);
- The 1972 Convention on Prevention of Collisions at Sea (COLREGS); and
- The 1972 Convention on the Prevention of Marine Pollution (London Convention).

The Law of the Sea Convention is the common frame of reference for implementing these IMO-sponsored conventions. In the IMO context, the United States has successfully urged positions which tend to hold flag States accountable for failing to uphold applicable environmental protection norms. By the same token, over the years the United States has been successful in urging realistic and practical methods of dealing with unilateral restrictions on navigation and on the rights of sovereign immune vessels which would potentially impair our operational freedoms in the name of environmental protection. Once again, the Convention is the glue that holds together diverse maritime interests in the environmental field. By becoming a party to the Convention, the United States will be in a much better position to influence events in organizations like the IMO. Moreover, our general ability to curtail the growth of unilateral claims that restrict navigation also will be strengthened.

From the standpoint of promoting international peace and stability, the Department strongly supports the Convention because it is one of the few comprehensive, legally binding instruments committed to global environmental security. As noted above, DOD has made a significant policy and fiscal commitment to operate in an environmentally responsible manner to assure itself access to foreign ports, bases, and airfields, as well as to set a standard which other nations will follow. In examining the factors which precipitated the current and past instabilities in Haiti, Somalia, Rwanda, the Sudan and elsewhere among developing States, it is clear that environmental mismanagement played a role.

The Convention requires States: to ensure that activities under their jurisdiction do not cause environmental damage to other States or result in the spread of pollution beyond their own offshore zones; to minimize the release of harmful substances into the marine environment from land-based sources; to protect fragile ecosystems; and to conserve living resources. It serves U.S. national security interests to promote universal adherence to the Convention as a means to limit and resolve conflicts arising out of environmental degradation and the transboundary movement of pollutants.

THE CONVENTION PROVIDES AN IMPORTANT FOUNDATION FOR FUTURE EFFORTS TO IMPROVE THE LEGAL REGIME AFFECTING MANAGEMENT OF MARINE RESOURCES AND RESOLUTION OF CONFLICTS

The management of fish stocks is becoming

an increasingly contentious issue for those States which rely upon fishing to feed their populations. The U.N. Food and Agriculture Organization (FAO) predicts that demand for fish will be 100-120 million tons in 2010, when the world population will reach 7 billion, while present food fish production is only about 70 million tons.

Even though DOD's mission does not include fisheries management, it is well understood that competition for a decreasing stock of resources can result in conflict, as illustrated by the March 1995 "Turbot Dispute" between Canada and Spain. Thus, the Department has a legitimate interest in finding solutions or mechanisms to resolve conflict between coastal States and/or among fishing States competing for diminishing fish stocks which are beyond the scope of a nation's management jurisdiction. In addition to finding better ways to manage a comparatively smaller number of fish, it is apparent that international and regional cooperative measures must be taken to achieve a sustainable increase in fish production. ***[see Figure 9]***

The precipitous decline of world fish stocks is due largely to the lack of a coordinated approach to the management of fisheries resources. In this regard, the Convention provides the framework for empowering regional fishing organizations to deal with conservation issues. The Convention also levies important duties on coastal States to manage their fishery resources to the limits of their maximum sustainable yield, and take into account the rights of states which have traditionally fished in their waters. These principles are the legal cornerstones of the recently concluded FAO Reflagging Agreement in 1994, and the Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (which was opened for signature on December 4, 1995; the U.S. has become a signatory). The fisheries management precepts of the Convention, together with its encouragement to fishing States to enter into regional agreements, are fundamental to maintaining order between fishing and coastal States.

The United States has played an important role in promoting workable solutions to fisheries management problems. By joining the Convention, the U.S. will be in a much stronger position to exercise influence in efforts to achieve solutions to these problems, providing the U.S. with the tools to formulate workable diplomatic solutions.

The Convention also will keep in check the natural desire by coastal States to extend their sovereignty over offshore areas through the type of increased regulation which would be inimical to our navigation and overflight rights. Like the current trend in fishing disputes, States have proposed measures that encroach on navigational freedoms because of perceptions that navigation is harmful to the living marine resources or that navigation will interfere with exploitation of the resources of the continental shelf. Coral reef ecosystems are coming under tremendous

Canada Fires Warning Shots, Seizes Fishing Boat in International Waters

By Anne Swardson
Washington Post Foreign Service

HALIFAX, Nova Scotia, March 9—Canadian patrol boats fired warning shots at a Spanish fishing vessel in international waters today, then boarded it, arrested the captain and began towing the ship to a Canadian port in an action designed to stop what Canadian officials said was overfishing of turbot.

The European Union, which oversees fishing issues for its member nations, condemned Canada, calling the high seas dispute over turbot fishing an act of "organized piracy."

After a day of confusion about what actually occurred just outside Canada's 200-mile limit off Newfoundland, EU Fisheries Commissioner Emma Bonino said Canadian authorities tried to board the Estai around noon, but the boat got away. She added that the EU was keeping its options open to retaliate with diplomatic or trade sanctions, the Associated Press reported.

Canadian Fisheries Minister Brian Tobin, however, said officers from three Canadian fisheries and coast guard vessels boarded the Estai after two earlier attempts were foiled when Estai crew members cut their nets, cast off the boarding ladders and steamed away. The trawler stopped after the Canadian ships fired four 50mm warning shots.

The Estai, which was one of five Spanish boats fishing just outside Canada's territorial waters, was being taken to the Newfoundland port of St. John's tonight. Tobin said 95 percent of the contents of the trawler's freezers was turbot, a large flatfish also called a Greenland halibut. He added that the operation would continue Friday if any more trawlers were found fishing for turbot.

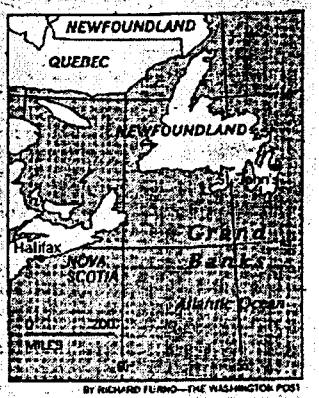
"These are the last viable commercial straddling stocks," Tobin said, referring to fish that cross between territorial waters and the open seas. "Without action at this time, that stock will not be around next year."

Today's incident marked a dramatic escalation of Canada's efforts to halt what it says is overfishing of its own fish stocks in international waters. Since last year, Canada has seized two American scallop-fishing vessels in international waters off Newfoundland, and arrested a Panamanian-registered trawler, also off the Grand Banks. It also temporarily imposed a $1,000 fee on American boats fishing for salmon off Canada's west coast last summer.

REUTER

Canadian Fisheries Minister Brian Tobin locates site of incident on map.

EMMA BONINO
. . . "organized piracy"



BY RICHARD FEIRNO—THE WASHINGTON POST

The Canadian Parliament last year approved legislation authorizing seizures on the high seas, contending that it can do so because two sections of its territorial fishing grounds on the Grank Banks extend into the high seas. The government issued regulations implementing that law last Friday.

In the case of turbot, Canada contends it can act because ships from Spain and Portugal have exceeded EU allocations of turbot that were established last fall by the Northwest Atlantic Fisheries Organization. The quotas reduced the EU allocation from 70 percent of the total catch to about 12 percent, which equates to about 3,400 metric tons of turbot. Canada contends the EU already has caught that amount.

Canada, one of the most aggressive nations in asserting its fishing rights, fears that turbot will go the way of the cod, a fish that formerly sustained much of Canada's east coast fishing industry but has been all but wiped out by overfishing. Tobin represents a district in Newfoundland, the province hardest-hit by the fishing crisis, in the Canadian House of Commons. He has been targeting the EU, whose catches of turbot in the Atlantic off Canada have risen more than tenfold in the last 10 years.

Prime Minister Jean Chretien spoke with EU President Jacques Santer by phone Wednesday night. Santer reportedly proposed negotiation; Chretien responded that the EU fishing vessels would have to leave first. The vessels pulled out Tuesday after Tobin first threatened to use force, but returned Wednesday.

Figure 9.

pressure because of population growth (3.5 billion of the 5.6 billion people on earth now live in coastal areas), poor resource management, and land-based sources of pollution. World attention has only recently been focused on this problem. Certain States have reacted by proposing creation of protected zones in marine habitat areas which could restrict access to or place them "off-limits" to navigation because of their special ecological sensitivity or importance to coastal fish stocks. DOD's perspective is that navigation is generally an environmentally benign activity if flag States properly regulate their flag vessels. That perspective is reinforced by both the "due regard" and environmental obligations on the flag State under the Convention. This helps to make clear that geographic restrictions on navigation are an unnecessary and harmful diversion of attention from the root cause of the problem: land-based sources of marine pollution.

Continued offshore development of areas of the continental shelf for fish farming and oil and gas extraction (particularly in critical choke points) will inevitably impact on the navigational freedoms which DOD must preserve to meets its operational commitments worldwide. At the Strait of Malacca Conference on June 14-15, 1994, the U.S. heard arguments that:

- The coastal State's right to explore for oil and use the Strait for economic development is greater than the international community's right to use the Strait; and
- The newness of the transit passage regime lends uncertainty as to whether the regime has become a customary practice of international law.

As noted in Figures 2 and 4, the Strait of Malacca is a strategic waterway that DOD uses to move forces from Pacific bases to the Indian Ocean and Persian Gulf. These arguments, coupled with the trend towards special zones which restrict or prohibit navigation, reinforce the basic theme that threats to freedom of navigation and the right of transit passage are still very real. It is clear that the Convention provides the best structural and normative framework for the United States to attack objectionable claims as well as address increasingly numerous conflicts over use of the seas.

SINCE THE UNITED STATES ALREADY REGARDS MOST OF THE NON-SEABED MINING PROVISIONS OF THE CONVENTION TO REFLECT CUSTOMARY INTERNATIONAL LAW, DOES THE UNITED STATES DERIVE ANY BENEFIT BY BECOMING A PARTY TO THE CONVENTION?

In the view of the Department of Defense, significant interests of the United States are advanced by becoming a party to the Convention:

- The Convention is the platform of principle on which we base our operations and strategic planning today. We can best secure that platform in a treaty ratified by us and the rest

of the nations of the world.

- Renegotiation of the Part XI Agreement was late in coming, in part, because many nations regarded the Convention to be a "package deal" and felt that all States should accept the good with the bad to maintain balance between the various groups of States which participated in the negotiation: developing vs. developed States; mineral-producing vs. non-mineral-producing States; coastal vs. maritime States. Consequently, Iran, for example, continues to assert that key navigational principles (particularly the regime of transit passage) are not customary international law but a contractual benefit flowing from the Convention. Our remaining a non-party to the Convention would tend to reinforce those arguments. There is also general agreement among maritime powers that rejection of a "reasonable" Convention by them could create a highly unstable situation vis-a-vis those States which have already ratified the Convention.

- From the standpoint of promoting global stability, universal accession to the Convention, as modified by the Part XI Agreement, will at last stabilize and fix the rules which States now argue do or do not exist as a matter of customary law. Unlike the 1958 Geneva Convention on the High Seas, which, according to its preamble, is a codification of "the rules of international law of the high seas," many international legal scholars view the LOS Convention as containing both provisions that codify customary international law and provisions that represent progressive development of the law. **Moreover, since many important provisions that protect our national security interests are found in the very carefully drafted details of the text, customary international law is unlikely to incorporate such detail and nuance.**

- The customary international law of the sea has proven to be highly unstable in this century. Because the Convention and related agreements largely satisfy the resource interests of coastal States, future instability in the law of the sea is even more likely to threaten our security, navigational and telecommunications interests than in the past. Our best chance to stabilize the law of the sea on an acceptable basis is to promote global ratification of the Convention. This provides us with a means to develop pragmatic solutions to new problems without debating or disturbing the core principles essential to our national security.

- We are moving into a new era where the Convention, having entered into force, will have much greater importance in maintaining the delicate balance between coastal State and maritime State interests. Much of the work to implement the Convention will occur in organizations such as the IMO, where government representatives will consider new treaties and regulations significantly impacting U.S. security interests without regard to customary international law. We risk losing our ability to speak with authority at these deliberations if we fail to join the Convention.

- Our principal allies are in the process of becoming parties to the Convention. Some have already done so. Delay or failure to join them will undermine alliance cohesion and impair our capacity to lead and to protect our interests not only on a global level, but among our allies.

- Time is of the essence if the U.S. is to par-

ticipate in two key events. Nominations for the International Tribunal for the Law of the Sea close in May 1996, and the election of its members will be held in August 1996. Members of the Commission on the Limits of the Continental Shelf are scheduled to be elected in March 1997. Only parties to the Convention may nominate and vote in elections to select members of these bodies, who will influence the interpretation and application of the Convention for years to come.

CONCLUSION

A universal regime for governance of the oceans is needed to safeguard U.S. security and economic interests, as well as to defuse those situations in which competing uses of the oceans are likely to result in conflict. In addition to strongly supporting our national security interests in freedom of navigation and overflight, the Convention provides an effective framework for serious efforts to address economic pressures upon the oceans resulting from land and sea-based sources of pollution and overfishing. Moreover, the Part XI Agreement provides us with a near-term opportunity to join with our allies and other industrialized nations in a widely accepted international order to regulate and safeguard the many diverse activities, interests, and resources in the world's oceans. Historically, this nation's security has depended upon our ability to conduct military operations and commerce over, under, and on the oceans.

The best guarantee that this free and unfettered access to the world's oceans will continue in the years ahead is for the U.S. to become a party to the Convention, as modified by the Agreement, at the earliest possible time.

NOTES

1. MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, AND THE AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI, S. TREATY DOC 103-39, 103d Cong., 2d Sess. (1994) [hereinafter *Transmittal Documents*].

2. 18 Weekly Comp. Pres. Doc. 877 (July 9, 1982).

3. *Id. See also*, James L. Malone, *The United States and the Law of the Sea*, 24 VA. J. INT'L L. 785 (1984).

4. 19 Weekly Comp. Pres. Doc. 383-385 (Mar. 10, 1983).

5. Dept. of State, *Limits in the Seas No. 112, United States Responses to Excessive National Maritime Claims* (March 9, 1992). Illegal claims which have been challenged include: improper straight baseline claims, excessive territorial sea claims, and claims which restrict the right of transit passage or innocent passage by all ships (including warships) without notice.

6. 24 Weekly Comp. Pres. Docs. 52 (Dec. 27, 1989).

7. G.A. Res. 263, U.N. GAOR, 48th Sess., U.N. Doc. A/48/L.60 (1994).

8. Under Article 6 of the Agreement, the Agreement will enter into force 30 days after 40 States have established their consent to be bound, provided that at least seven of the States come from the group of "Pioneer Investor" States, identified in Resolution II of the Final Act of the Third U.N. Conference on the Law of the Sea, and that five of these States are developed States. The pioneer investor States include France, India, Japan, the U.S.S.R., Belgium, Canada, Germany, Italy, The Netherlands, the United Kingdom, the United States, and any developing States that have committed levels of expenditure stipulated by paragraph 1(a)(i) of this Resolution.

9. William L. Schachte, Jr. (Rear Admiral, JAGC, USN, Ret.), Remarks before the 25th Annual Law of the Sea Conference, Law of the Sea Institute, University of Hawaii, 6-9 August 1991, Malmo, Sweden (Manuscript Available in DOD REPOPA Files).

10. *See* Articles 31, 32, 96 and 236, 1982 United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982, entered into force November 16, 1994.

11. *See Transmittal Documents*, at IX-X ("The Convention identifies four potential fora for binding dispute settlement: The International Tribunal for the Law of the Sea constituted under Annex VI; the International Court of Justice; an arbitral tribunal constituted in accordance with Annex VII; and a special arbitral tribunal constituted in accordance with Annex VIII for specified categories of disputes.").

12. John R. Stevenson & Bernard H. Oxman, *The Future of the United Nations Convention on the Law of the Sea*, 88 AM. J. INT'L L. 488 (1994).

13. Montreaux Convention on the Turkish Straits, July 20, 1936, 173 LNTS 213.

14. *See, e.g.*, Sherri Wasserman Goodman, Deputy Under Secretary of Defense for Environmental Security, *DOD's New Vision for Environmental Security*, DEFENSE ISSUES, Vol. 9, No. 24.

15. The IMO is recognized as the "competent international organization," in Article 211, to decide questions relating to vessel design and construction as well as restrictive navigational schemes to protect the environment (*e.g.*, traffic separation schemes in straits and archipelagic waters).

16. Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships of 1973, Done at London February 17, 1978. (Protocol incorporates, with modifications, the provisions of the 1973 convention, including its annexes and protocol.)

17. Convention on the International Regulations for Preventing Collisions at Sea, Done at London October 20, 1972, 28 UST 3459, TIAS 8587.

18. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, Done at Washington, London, Mexico City and Moscow, December 29, 1972, 26 UST 2403, TIAS 8165, 1046 UNTS 120.

19. *Safeguarding Future Fish Supplies: Key Policy Issues and Measures*, U.N. Food and Agriculture Organization, *paper prepared for* International Conference on the Sustainable Contribution of Fisheries to Food Security, Kyoto, Japan, December 4-9, 1995.

Figure 10.

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Soviets Bump U.S. Ships In Black Sea

By George C. Wilson
Washington Post Staff Writer

Two small Soviet warships deliberately bumped two U.S. Navy ships steaming through the Black Sea within nine miles of the Crimean coast yesterday in a test of what constitutes Soviet territorial waters, according to the Defense Department.

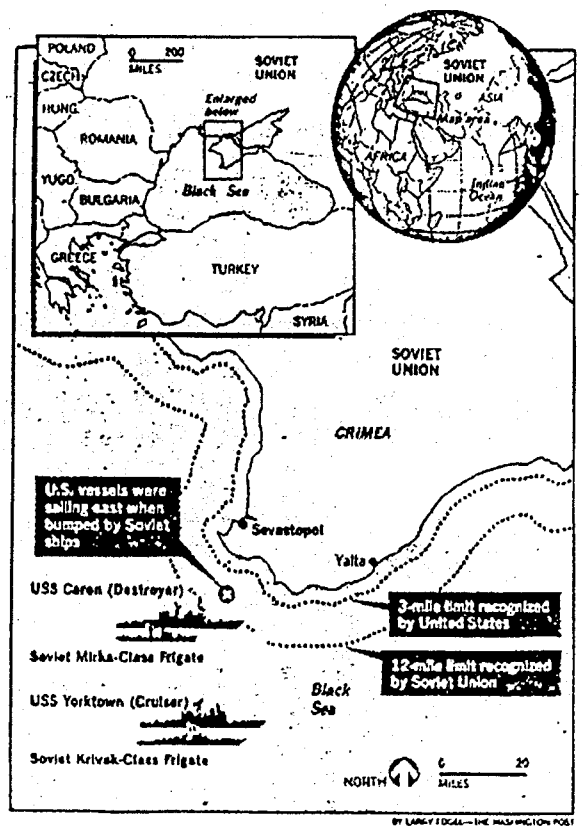
No serious injury or damage was inflicted by the slight collisions, Navy officals said. They said this was the first time in memory that the Soviets bumped ships in the Black Sea, although the Soviets protested a 1986 U.S. patrol in the same area. Washington and Moscow each blamed the other for provoking yesterday's collisions, and the United States called Soviet Ambassador Yuri Dubinin to the State Department yesterday morning to protest.

The Navy mission called for the destroyer USS Caron and the cruiser USS Yorktown to exercise the "right of innocent passage" by sailing past the Crimean peninsula inside the 12-mile limit that Moscow claims as territorial waters, according to the Pentagon. The United States claims a three-mile territorial limit.

Shortly before 11 a.m. (3 a.m. EST), the Navy said, one of the Soviet skippers steaming east off Crimea radioed this warning to the U.S. ships: "Soviet ships have orders to prevent violation of territorial waters. I am authorized to strike your ship with one of ours."

"We made no response on [the radio]," Capt. Gerrish C. Flynn said at a Pentagon briefing. "Our response was to continue on course and speed, which is what any prudent mariner would do." Flynn said a Soviet Badger bomber flew over the ships, apparently keeping track

BUMP...Pg. 6



WASHINGTON POST
16 FEBRUARY 1988 Pg. 17

Reagan Hadn't Approved Black Sea Maneuver

Knight-Ridder

President Reagan did not approve in advance a plan to challenge Soviet claims to a 12-mile territorial limit in the Black Sea last week, but knew in general about the program, White House officials said yesterday.

The U.S. challenge last Friday prompted two Soviet navy vessels to bump two U.S. warships less than 10 miles off the Crimean coast.

The United States asserts it is free to sail within three miles of any nation's coast.

N one was hurt in the incident, which caused minor damage.

Reagan's knowledge of the challenge had been unclear.

A White House official said yesterday that "while the president may not have known in advance about the exact timing and location of our warships in the Black Sea maneuvers, he is intimately familiar with our freedom of navigation program . . . . [So he] was not taken unawares and he did not have to be briefed about what we were doing there."

The official said Secretary of State George P. Shultz, Defense Secretary Frank C. Carlucci and national security adviser Colin L. Powell gave advance approval of the plan.

WASHINGTON POST
14 FEBRUARY 1988 Pg. 46

Soviets Protest Collision Of Warships in Black Sea

Moscow Blames Incident on U.S. Vessels

By Gary Lee
Washington Post Foreign Service

MOSCOW, Feb. 13—Soviet Foreign Ministry spokesman Gennadi Gerasimov today protested yesterday's collision of U.S. and Soviet warships off the Soviet Black Sea coast, saying the incident was the fault of the American vessels.

"We cannot help but view this serious and dangerous incident as undermining recent improvements in relations," Gerasimov told a press conference today.

"We can only hope that this incident will not hinder the process of improvement in relations between our two countries, and in particular the forthcoming meetings between our defense and foreign ministers and the summit."

Gerasimov was referring to scheduled meetings between Soviet Defense Minister Dimitri Yazov and U.S. Defense Secretary Frank C. Carlucci March 16-17, between Secretary of State George P. Shultz and Soviet Foreign Minister Eduard Shevardnadze Feb. 21-23, and a summit meeting between Mikhail Gorbachev and President Reagan, planned for later in the spring.

Gerasimov and Adm. Konstantin Makarov, first deputy commander in chief of the Soviet Navy, gave the Soviet version of the incident, which conflicted with the official U.S. version.

Two U.S. ships, the cruiser Yorktown and the destroyer Caron, entered Soviet coastal waters off the southern tip of the Crimean Peninsula and began approaching two Soviet frigates, Gerasimov said.

"Despite warning signals given by approaching Soviet vessels, the American ships did not react," Gerasimov said.

"Having intruded, the U.S. vessels maneuvered dangerously, and this led to a collision," he said.

"The collisions took place because of dangerous maneuvers by the American vessels," he added.

Gerasimov said U.S. Ambassador Jack F. Matlock had been summoned to the Foreign Ministry this morning, where Deputy Foreign Minister Alexander Bessmertnykh read him a "strong protest" over the incident.

Yesterday, American officials protested the incident to Soviet Ambassador Yuri Dubinin in Washington. They said that the two Soviet ships had deliberately rammed the U.S. vessels beyond the three-mile limit that the U.S. recognizes for Soviet territorial waters. The Soviets, however, claim a 12-mile limit.

A Pentagon official acknowledged that the two U.S. ships were within

PROTEST...Pg. 6

RESTRICTIONS ON FREEDOM OF NAVIGATION AND OVERFLIGHT

While U.S. military forces are generally free to navigate worldwide consistent with international law as reflected in the 1982 LOS Convention, there have been many instances where our rights have been challenged. Some examples:

- In 1967 the Soviet Union denied passage through the Northeast Passage in the Arctic to two U.S. Coast Guard icebreakers. As a result, they were unable to complete their mission. This route has been denied to U.S. surface vessels since then.

- In 1973, Libya enclosed a huge area of water in the Gulf of Sidra as an "historic bay." Although the world has largely rejected the claim, Libya's willingness to use force ("line of death") has deterred many from exercising their rights.

- In 1982 and 1987, Soviet forces interfered with the operations of U.S. naval frigates near Peter the Great Bay. The Soviets claim the bay as "historic" and the waters as internal. The United States considers these to be international waters.

- After the August 1985 transit of the U.S. Coast Guard icebreaker *Polar Sea* through the Northwest Passage, public opinion resulted in a restrictive Canadian law claiming high seas areas as internal waters and closing international straits. To maintain our access to the Northwest Passage, the United States agreed not to transit with Coast Guard icebreakers without Canada's consent to the conduct of marine scientific research during the passage.

- In January 1988, two Soviet border guard vessels intentionally "bumped" the *USS Caron* and *USS Yorktown* engaged in innocent passage in the territorial sea off the Crimean Peninsula. ***[see Figure 10]***

- Having claimed a 200 NM territorial sea since 1947, Peru regularly intercepts U.S. planes far off the coast of Peru. In 1989, the Chief of Staff of the Air Force was a passenger on an intercepted aircraft. Later, in April 1992, a Peruvian fighter aircraft intercepted and shot at a USAF C-130 aircraft, killing one crewmember and wounding two others. Peru attempted to justify its action asserting that the U.S. aircraft was within its illegal 200 NM territorial sea/airspace.

- In February 1995, two USAF C-130 aircraft en route from Panama to Chile were denied permission to enter Peru's airspace, well beyond 12 NM, because they did not have diplomatic clearance.

Other States' forces are even more constrained than the United States, often acquiescing in excessive maritime claims, because they do not have the naval resources to support operational challenges.

STATUS OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA AND AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI

As of December 31, 1995, there are 83 parties to the Law of the Sea Convention, 43 States (of the 79 States and entities to have signed the Agreement) have consented to be bound by the Agreement Relating to Implementation of Part XI, and 125 States and entities have agreed to apply the Agreement provisionally. Under Article 6 of the Agreement, the Agreement will enter into force 30 days after the requisite number of States have established their consent to be bound, provided that at least seven of the States come from the group of "Pioneer Investor" States, identified in Resolution II of the Final Act of the Third U.N. Conference on the Law of the Sea, and that five of these States are developed States. The pioneer investor States include France, India, Japan, the U.S.S.R., Belgium, Canada, Germany, Italy, The Netherlands, the United Kingdom, the United States, and any developing States that have committed levels of expenditure stipulated by paragraph 1(a)(i) of this Resolution.

Parties to the Convention on the Law of the Sea*

Angola
Antigua & Barbuda
Argentina
Australia
Austria
The Bahamas
Bahrain
Barbados
Belize
Bolivia
Bosnia-Herzegovina
Botswana
Brazil
Cameroon
Cape Verde
Comoros
Cook Islands
Costa Rica
Cote d'Ivoire
Croatia
Cuba
Cyprus
Djibouti
Dominica
Egypt
Fiji
The Gambia
Germany
Ghana
Greece
Grenada
Guinea
Guinea-Bissau
Guyana
Honduras
Iceland
India
Indonesia
Iraq
Italy
Jamaica
Jordan
Kenya
Kuwait
Lebanon
Former Yugoslav Republic of Macedonia
Mali
Malta
Marshall Islands
Mauritius
Mexico
Federated States of Micronesia
Namibia
Nigeria
Oman
Paraguay
Philippines
St. Kitts & Nevis
St. Lucia
St. Vincent & the Grenadines
Samoa
Sao Tome & Principe
Senegal
Seychelles
Sierra Leone
Singapore
Slovenia
Somalia
Sri Lanka
Sudan
Tanzania
Togo
Tonga
Trinidad & Tobago
Tunisia
Uganda
Uruguay
Vietnam
Yemen
Federal Republic of Yugoslavia**
Zaire
Zambia
Zimbabwe

Status of the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea

State Date of Signature	Date of Provisional Application [Notice of Non-application]	Date of Ratification
Afghanistan	November 16, 1994	
Albania	November 16, 1994	
Algeria - July 29, 1994	November 16, 1994	
Andorra	November 16, 1994	
Angola		
Antigua & Barbuda		
Argentina - July 29, 1994	November 16, 1994	December 1, 1995
Armenia	November 16, 1994	
Australia - July 29, 1994	November 16, 1994	
Austria - July 29, 1994	November 16, 1994	October 5, 1994
Azerbaijan		July 14, 1995
Bahamas - July 29, 1994	November 16, 1994	
Bahrain	November 16, 1994	July 28, 1995
Bangladesh	November 16, 1994	
Barbados - Nov. 15, 1994	November 16, 1994	
Belarus	November 16, 1994	July 28, 1995
Belgium - July 29, 1994	November 16, 1994	
Belize	November 16, 1994	
Benin	November 16, 1994	October 21, 1995
Bhutan	November 16, 1994	
Bolivia	November 16, 1994	
Bosnia & Herzegovina		April 28, 1995
Botswana	November 16, 1994	
Brazil - July 29, 1994	[July 29, 1994]	
Brunei Darussalam	November 16, 1994	Non-use of Art. 5***
Bulgaria	[November 15, 1994]	
Bukina Faso - Nov. 30, 1994	November 30, 1994	
Burundi	November 16, 1994	
Cambodia	November 16, 1994	
Cameroon - May 24, 1995	May 24, 1995	
Canada - July 29, 1994	November 16, 1994	
Cape Verde - July 29, 1994	November 16, 1994	
Central African Republic		Non-use of Art. 5
Chad		
Chile	November 16, 1994	
China - July 29, 1994	November 16, 1994	
Colombia		
Comoros		
Congo	November 16, 1994	
Costa Rica		
Cote d'Ivoire - Nov. 25, 1994	November 16, 1994	
Croatia	April 5, 1995	July 28, 1995
Cuba	November 16, 1994	April 5, 1995
Cyprus - Nov. 1, 1994	[November 15, 1994]	
Czech Republic - Nov. 16, 1994	November 16, 1994	July 27, 1995

State Date of Signature	Date of Provisional Application [Notice of Non-application]	Date of Ratification
Democratic People's Republic of Korea		
Denmark - July 29, 1994	[July 29, 1994]	
Djibouti		
Dominica		
Dominican Republic		
Ecuador		
Egypt - March 22, 1995	November 16, 1994	Non-use of Art. 5
El Salvador		
Equatorial Guinea		
Eritrea	November 16, 1994	
Estonia	November 16, 1994	
Ethiopia	November 16, 1994	
Fiji - July 29, 1994	November 16, 1994	July 28, 1995
Finland - July 29, 1994	November 16, 1994	
France - July 29, 1994	November 16, 1994	
Gabon - April 4, 1995	November 16, 1994	
Gambia		
Georgia		
Germany - July 29, 1994	November 16, 1994	October 14, 1994
Ghana	November 16, 1994	
Greece - July 29, 1994	November 16, 1994	July 21, 1995
Grenada - Nov. 14, 1994	November 16, 1994	July 28, 1995
Guatamala		
Guinea - August 26, 1994	November 16, 1994	July 28, 1995
Guinea- Bissau		
Guyana	November 16, 1994	
Haiti		
Holy See		
Honduras	November 16, 1994	
Hungary	November 16, 1994	
Iceland - July 29, 1994	November 16, 1994	July 28, 1995
India - July 29, 1994	November 16, 1994	June 29, 1995
Indonesia - July 29, 1994	November 16, 1994	Non-use of Art. 5
Iran	[November 1, 1994]	
Iraq	November 16, 1994	
Ireland - July 29, 1994	[July 29, 1994]	
Israel		
Italy - July 29, 1994	November 16, 1994	January 13, 1995
Jamaica - July 29, 1994	November 16, 1994	July 28, 1995
Japan - July 29, 1994	November 16, 1994	
Jordan	November 27, 1995	November 27, 1995
Kazakhstan		
Kenya	November 16, 1994	July 29, 1994
Kiribati		
Kuwait	November 16, 1994	
Kyrgyzstan		
Lao People's Democratic Republic	November 16, 1994	

State Date of Signature	Date of Provisional Application [Notice of Non-application]	Date of Ratification
Latvia		
Lebanon	January 5, 1995	January 5, 1995
Lesotho		
Liberia		
Libyan Arab Jamahiriya	November 16, 1994	
Liechtenstein	November 16, 1994	
Lithuania		
Luxembourg - July 29, 1994	November 16, 1994	
Macedonia (The Former Yugoslav Republic of)	November 16, 1994	August 19, 1994
Madagascar	November 16, 1994	
Malawi		
Malaysia - August 2, 1994	November 16, 1994	
Maldives - October 19, 1994	November 16, 1994	
Mali		
Malta - July 29, 1994	November 16, 1994	Non-use of Art. 5
Marshall Islands	November 16, 1994	
Mauritania - August 2, 1994	November 16, 1994	
Mauritius	November 16, 1994	November 4, 1994
Mexico	[November 2, 1994]	
Micronesia - August 10, 1994	November 16, 1994	September 6, 1995
Moldova, Republic of	November 16, 1994	
Monaco - November 30, 1994	November 16, 1994	
Mongolia - August 17, 1994	November 16, 1994	
Morocco - October 19, 1994	[October 19, 1994]	
Mozambique	November 16, 1994	
Myanmar	November 16, 1994	
Namibia - July 29, 1994	November 16, 1994	July 28, 1995
Nauru		
Nepal	November 16, 1994	
Netherlands - July 29, 1994	November 16, 1994	
New Zealand - July 29, 1994	November 16, 1994	
Nicaragua		
Niger		
Nigeria - October 25, 1994	November 16, 1994	July 28, 1995
Norway	November 16, 1994	
Oman	November 16, 1994	
Pakistan - August 10, 1994	November 16, 1994	
Panama		
Papua New Guinea	November 16, 1994	
Paraguay - July 29, 1994	November 16, 1994	July 10, 1995
Peru		
Philippines - Nov. 15, 1994	November 16, 1994	Non-use of Art. 5
Poland - July 29, 1994	February 23, 1995	
Portugal - July 29, 1994	[July 29, 1994]	
Qatar	November 16, 1994	
Rep. of Korea - Nov. 7, 1994	November 16, 1994	
Romania	[October 4, 1994]	

State Date of Signature	Date of Provisional Application [Notice of Non-application]	Date of Ratification
Russian Federation	January 11, 1995	
Rwanda		
Saint Kitts & Nevis		
Saint Lucia		
St. Vincent & the Grenadines		
Samoa - July 7, 1995	November 16, 1994	August 14, 1995
San Marino		
Sao Tome & Principe		
Saudi Arabia	[November 9, 1994]	
Senegal - August 9, 1994	November 16, 1994	July 25, 1995
Seychelles - July 29, 1994	November 16, 1994	December 15, 1994
Sierra Leone	December 12, 1994	December 12, 1994
Singapore	November 16, 1994	November 17, 1994
Slovak Federal Republic - Nov. 14, 1994	November 16, 1994	
Slovenia - January 19, 1995	[November 15, 1994]	June 16, 1995
Solomon Islands	February 8, 1995	
Somalia		
South Africa - October 3, 1994	November 16, 1994	
Spain - July 29, 1994		Non-use of Art. 5
Sri Lanka - July 29, 1994	November 16, 1994	July 28, 1995
Sudan - July 29, 1994	November 16, 1994	Non-use of Art. 5
Suriname	November 16, 1994	
Swaziland - October 12, 1994	November 16, 1994	
Sweden - July 29, 1994	[July 29, 1994]	
Switzerland - October 26, 1994	November 16, 1994	
Syrian Arab Republic		
Tajikistan		
Thailand		
Togo - August 3, 1994	November 16, 1994	July 28, 1995
Tonga		August 2, 1995
Trinidad & Tobago - October 10, 1994	November 16, 1994	July 28, 1995
Tunisia - May 15, 1995	November 16, 1994	Non-use of Art. 5
Turkey		
Turkmenistan		
Tuvalu		
Uganda - August 9, 1994	November 16, 1994	July 28, 1995
Ukraine - February 28, 1995	November 16, 1994	
United Arab Emirates	November 16, 1994	
United Kingdom-July 29, 1994	November 16, 1994	
United Republic of Tanzania - October 7, 1994	November 16, 1994	Non-use of Art. 5
United States of America - July 29, 1994	November 16, 1994	
Uruguay - July 29, 1994	[July 29, 1994]	
Uzbekistan		
Vanuatu - July 29, 1994	November 16, 1994	
Venezuela		

State Date of Signature	Date of Provisional Application [Notice of Non-application]	Date of Ratification
Viet Nam	November 16, 1994	
Yemen		
Yugoslavia - May 12, 1995	May 12, 1995	July 28, 1995
Zaire		
Zambia - October 13, 1994	November 16, 1994	July 28, 1995
Zimbabwe - October 28, 1994	November 16, 1994	July 28, 1995
Other Entities		
Cook Islands	February 15, 1995	February 15, 1995
European Economic Community - July 29, 1994	November 16, 1994	

*The following countries have informally indicated their intention to become party to the Convention once their internal ratification procedures are completed: Belgium, Canada, Chile, China, Denmark, Finland, France, Ireland, Japan, Republic of Korea, Luxembourg, The Netherlands, New Zealand, Panama, Portugal, South Africa, Spain, Sweden, Switzerland, Ukraine, and United Kingdom.

**Serbia and Montenegro have asserted the formation of a joint independent State as the successor to the Socialist Federal Republic of Yugoslavia (Serbia and Montenegro), but this entity has not been formally recognized as a State by the United States.

***State has notified the United Nations of its intent not to use the simplified procedure set forth in Article 5 to indicate its intent to be bound by the Agreement. This procedure was available to parties to the Convention until July 28, 1995, allowing them to consent to be bound to the Agreement by their silence. A State indicating that it would not use this simplified procedure, would be considered to be bound only after it had deposited an instrument of ratification, formal confirmation, or accession to the Agreement.

THE LAW OF THE SEA CONVENTION AND U.S. NATIONAL SECURITY INTERESTS

The Law of the Sea Convention will:

- Preserve freedoms of navigation and overflight on the high seas.
- Maintain these high seas freedoms in the 200 NM Exclusive Economic Zones of coastal States [e.g., Vietnam].
- Guarantee freedom of navigation and overflight through international straits [most crucial are Gibralter, Hormuz, and Malacca].
- Establish the regime of archipelagic sea lanes passage [for transit through strategically located archipelagoes, such as Indonesia and the Philippines].
- Guarantee passage through foreign territorial seas along with a clear delineation of coastal State regulatory authority.
- Limit the width of the territorial sea to twelve nautical miles.
- Establish more objective rules for drawing baselines for measuring maritime zones [restrains coastal States from extending their jurisdictional reach farther seaward].
- Preserve the sovereign immune status of our warships and other public vessels and aircraft.
- Maintain the careful balance between coastal State jurisdiction over maritime pollution and the international community's navigational freedoms.
- Preserve the freedom to conduct military surveys seaward of foreign territorial seas [without the requirement to obtain the coastal State's permission].

WHAT HAS CHANGED SINCE 1982?

- END OF THE COLD WAR
- NEW U.S. LITTORAL STRATEGY
- 1994 AGREEMENT MODIFYING PART XI
- 1995 AGREEMENT RELATING TO STRADDLING AND HIGHLY MIGRATORY FISH STOCKS
- INDUSTRIALIZED STATES JOIN THE CONVENTION