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Revised single negotiating text (part IV)

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Revised single negotiating text*

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PART IV

(Text presented by the President of the Conference)**

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*For parts I, II and III, see *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. V (United Nations publication, Sales No. E.76.V.8), document A/CONF.62/WP.8/Rev.1.

**See the note by the President of the Conference in document A/CONF.62/WP.8/Rev.1.

INTRODUCTORY NOTE

At its 71st meeting on 2 August 1976 the Conference authorized the President to prepare a revised single negotiating text on the subject of settlement of disputes, which would have the same status as parts I to III of the revised single negotiating text. In accordance with that decision, the President now presents part IV of the revised single negotiating text which takes into account the discussions in the informal sessions of the plenary during the fifth session, and the formal and informal negotiations and proposals submitted both by delegations and groups. This text is presented as a further stage in the work of the Conference, has no other status than that of serving as a basis for continued negotiation, and is without prejudice to the right of any delegation to move any amendment or to introduce any new proposals. It is a procedural device to carry forward the process of negotiation in the expectation that it will help towards the attainment of general agreement.

Wherever the discussions showed a clear trend, the text is intended to reflect it. Where, however, sharp disagreement with divided views existed, the thrust of the text was maintained where it appeared to provide a compromise. Drafting changes have been effected when the discussions showed the need for clarification.

Certain articles necessarily take their form from the provisions of parts I to III of the revised single negotiating text. Should those texts be later changed on the basis of the negotiations within the Committees on the substantive issues involved, corresponding changes will be necessary in the present text.

As regards the provisions relating to limitations of jurisdiction including those concerned with certain rights of coastal States (article 17), optional exceptions to jurisdiction (article 18) and the provisions relating to the constitution of the Law of the Sea Tribunal and the sea-bed disputes chamber (articles 2 and 15 of annex II), any final formulation would have to take into account and be dependent upon negotiations relevant to corresponding provisions of other parts; to this extent, although the text is intended to provide a compromise, these articles must be considered as provisional.

The functional procedures in annex IV are a simplification of the four annexes that earlier constituted the special procedures. The negotiations in relation to this subject could not be expressed as indicating a trend in one direction. As a consequence and on account of the new formulation of paragraph 5 of article 9 relating to the applicable procedure where the parties have not accepted the jurisdiction of the same court or tribunal, the option of special arbitration is maintained.

The precise relationship of this part to the other parts of the proposed convention is yet to be determined, subject to which the present text is intended to provide a basis for negotiations on the subject of settlement of disputes to continue in parallel with the negotiations on the other parts of the revised single negotiating text.

* * *

Part IV. Settlement of disputes

Having regard to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations . . .

SECTION I

Article 1

Obligation to settle disputes by peaceful means

The Contracting Parties shall settle any dispute between them relating to the interpretation or application of the present Convention in accordance with paragraph 3 of article 2, and through the peaceful means indicated in paragraph 1 of article 33, of the Charter of the United Nations.

Article 2

Settlement of disputes by means chosen by the parties

Nothing in this part shall impair the right of any Contracting Parties to agree at any time to settle a dispute between them relating to the interpretation or application of the present Convention by any peaceful means of their own choice.

Article 3

Obligation to exchange views

1. If a dispute arises between Contracting Parties relating to the interpretation or application of the present Convention, those parties shall proceed expeditiously to exchange views regarding settlement of the dispute.

2. Similarly, the parties shall proceed to an exchange of views whenever a procedure for the settlement of a dispute has been terminated without a settlement of the dispute, or where a settlement has been reached and the circumstances require further consultation regarding the manner of its implementation.

Article 4

Obligations under general, regional or special agreements

If Contracting Parties which are parties to a dispute relating to the interpretation or application of the present Convention have accepted, through a general, regional or special agreement or some other instrument or instruments, an obligation to settle such dispute by resort to a final and binding procedure, such dispute shall, at the request of any part to the dispute, be referred to such procedure. In this case any other procedure provided in this part shall not apply, unless the parties to the dispute otherwise agree.

Article 5

Procedure when dispute is not settled by means chosen by the parties

1. If the parties to a dispute relating to the interpretation or application of the present Convention have agreed to settle such dispute by a peaceful means of their own choice, the procedure specified in this part shall apply only where no settlement has been reached, and the agreement between the parties does not preclude any further procedure.

2. If the parties to such dispute have also agreed on a time-limit for such a procedure, the provisions of paragraph 1 shall apply only upon the expiration of that time-limit.

*Article 6**Conciliation*

1. Any Contracting Party which is party to a dispute relating to the interpretation or application of the present Convention may invite the other party or parties to the dispute to submit the dispute to conciliation in accordance with the procedure in annex I or with some other procedure.

2. If the other party accepts this invitation and the parties agree upon the procedure, any party to the dispute may submit it to the agreed conciliation procedure.

3. If the other party does not accept the invitation or the parties do not agree upon the procedure, the conciliation proceedings shall be deemed to be terminated.

4. When a dispute has been submitted to conciliation, such conciliation proceedings may only be terminated in accordance with the provisions of annex I or other agreed conciliation procedure, as the case may be.

SECTION 2

*Article 7**Application of section 1 and proceedings under section 2*

Any dispute relating to the interpretation or application of the present Convention which has not been excluded under articles 17 and 18 shall, where no settlement has been reached by recourse to the provisions of section 1, be submitted, at the request of any party to the dispute, to the court or tribunal having jurisdiction under the provisions of section 2.

*Article 8**Procedures in other parts*

1. Notwithstanding anything to the contrary in this part and unless the parties otherwise agree, section 2 shall not apply to the settlement of any specific category of disputes for which another part of the present Convention provides a procedure which may be initiated by any party to the dispute and entails a binding decision.

2. Notwithstanding anything to the contrary in this part and unless the parties otherwise agree, section 2 shall apply to the settlement of a specific category of disputes for which another part of the present Convention provides a non-binding procedure, provided that:

(a) Such procedure has been concluded;

(b) No settlement has been reached; and

(c) The relevant part provides that the dispute shall be resolved by the procedures set forth in this part.

*Article 9**Choice of procedure*

1. A Contracting Party, when ratifying or otherwise expressing its consent to be bound by the present Convention, or at any time thereafter, shall be free to choose, by means of a declaration, one or more of the following procedures for the settlement of disputes relating to the interpretation or application of the present Convention:

(a) The Law of the Sea Tribunal;

(b) The International Court of Justice;

(c) Arbitration in accordance with annex III;

(d) The special arbitration procedure in accordance with annex IV, for one or more of the categories of disputes specified therein.

2. If a Contracting Party makes a declaration accepting the special arbitration procedure for any of the categories of disputes specified in Annex IV, it shall include the acceptance of one or more of the other procedures specified in paragraph 1 for the settlement of disputes to which the accepted special arbitration procedure is not applicable.

3. If a Contracting Party has not made a declaration under the preceding paragraphs, or if upon the expiration of such a declaration as a result of revocation no new declaration has been made, it shall be deemed to have accepted arbitration in accordance with annex III.

4. If the parties to a dispute have accepted or are deemed to have accepted the same procedure for the settlement of such dispute, it may only be submitted to that procedure, unless the parties otherwise agree.

5. If the parties to a dispute have not accepted or are not deemed to have accepted the same procedure, the party initiating proceedings may submit the dispute either to one of the procedures chosen by the other party, or to arbitration in accordance with annex III, unless the parties otherwise agree.

6. The declarations referred to in this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the Contracting Parties.

7. Any declaration made under this article shall remain in force until three months after notice of revocation has been deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the Contracting Parties.

8. When a dispute has been submitted to a court or tribunal having jurisdiction under this article, a new declaration, or the revocation or expiration of a declaration, shall not affect in any way the proceedings so pending, unless the parties otherwise agree.

*Article 10**Competence*

1. Any court or tribunal provided for in article 9 shall have jurisdiction in any dispute relating to the interpretation or application of the present Convention which is submitted to it in accordance with the provisions of this part.

2. Any court or tribunal provided for in article 9 shall have jurisdiction in any dispute relating to the interpretation or application of an international agreement related to the purposes of the present Convention, which is submitted to it in accordance with the provisions of such agreement.

3. In the event of disagreement between the parties to a dispute as to whether the court or tribunal to which such dispute has been submitted has jurisdiction, the matter shall be settled by the decision of that court or tribunal. Such a decision shall be taken in strict accordance with the provisions of article 9 or the international agreement in accordance with which the dispute was submitted, as the case may be.

*Article 11**Expert advice and assistance*

In any dispute involving scientific or technical matters which has been submitted to the Law of the Sea Tribunal, the International Court of Justice, or an arbitral tribunal con-

stituted in accordance with annex III, the court or tribunal in question may, in exercising jurisdiction under this section, at the request of a party to the dispute or on its own initiative, and in consultation with the parties, select not less than two and not more than four scientific or technical experts from the appropriate list prepared in accordance with article 2 of annex IV, who shall sit with such court or tribunal throughout all the stages of the proceedings, but without the right to vote.

Article 12

Provisional measures

1. Any court or tribunal to which a dispute has been submitted under this section shall have the power to prescribe such provisional measures as it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending final adjudication.

2. Any provisional measures under this article may only be prescribed, modified or revoked upon the request of a party to the dispute and after giving the parties an opportunity to be heard. Notice of any provisional measures shall be given forthwith by the court or tribunal to the parties to the dispute and to such other Contracting Parties as it considers appropriate.

3. If a dispute has been submitted under this section to a tribunal which has not been constituted, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks, the Law of the Sea Tribunal, shall have the power to prescribe provisional measures in conformity with paragraphs 1 and 2, if it considers that the urgency of the situation so requires. As soon as it has been constituted, the tribunal to which the dispute has been submitted may affirm, modify or revoke such provisional measures, acting in conformity with paragraphs 1 and 2.

4. As soon as the circumstances justifying the provisional measures have changed or ceased to exist, such provisional measures may be modified or revoked by the tribunal to which the dispute has been submitted or, where such tribunal has not been constituted, by the court or tribunal which prescribed the provisional measures under paragraph 3.

5. Any provisional measures prescribed or modified under this article shall be promptly complied with by the parties to the dispute.

Article 13

Access

1. All the dispute settlement procedures specified in the present Convention shall be open to the Contracting Parties.

2. Any dispute settlement procedure specified in the present Convention shall be open to entities other than Contracting Parties whenever the provisions of the present Convention so permit.

Article 14

Prompt release of vessels

1. Where the authorities of a Contracting Party have detained a vessel flying the flag of another Contracting Party and have failed to comply with the relevant provisions of the present Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other security, the question of release from detention may be brought before the Law of the Sea Tribunal, or any other court or tribunal

which the parties have accepted in accordance with article 9 for the settlement of disputes relating to navigation, unless the parties otherwise agree.

2. An application for such release may be brought by the flag State of the vessel, or on its behalf by either a diplomatic or consular officer.

3. The question of release shall be dealt with promptly by such court or tribunal, and shall be limited to the question of release only, without prejudice to the merits of any case against the vessel, its owner or its crew before the appropriate domestic forum.

4. The decision of such court or tribunal that the vessel or its crew be released shall be promptly complied with upon the posting of the bond or other security ordered by the court or tribunal.

Article 15

Applicable law

1. The court or tribunal having jurisdiction under this section shall apply the present Convention and other rules of international law not incompatible with the present Convention.

2. If the parties to a dispute so agree, the court or tribunal having jurisdiction under this section shall make its decision *ex aequo et bono*.

Article 16

Finality and binding force of decisions

1. Any decision rendered, measure prescribed or settlement effected by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute.

2. Any such decision, measure or settlement shall have no binding force except between the parties and in respect of that particular dispute.

Article 17

Limitations on applicability of section 2

1. Disputes relating to the exercise by a coastal State of sovereign rights, exclusive rights or exclusive jurisdiction recognized by the present Convention shall be subject to the procedures specified in section 2 only in the following cases:

(a) When it is claimed that a coastal State has acted in contravention of the provisions of the present Convention in regard to the freedom of navigation or overflight or of the laying of submarine cables and pipelines and other internationally lawful uses of the sea related to navigation or communication; or

(b) When it is claimed that any State, in exercising the aforementioned freedoms, has acted in contravention of the provisions of the present Convention or of laws or regulations enacted by the coastal State in conformity with the present Convention and other rules of international law not incompatible with the present Convention; or

(c) When it is claimed that a coastal State has acted in contravention of specified international standards or criteria for the preservation of the marine environment or for the conduct of marine scientific research, which are applicable to the coastal State and which have been established by the present Convention or by a competent international authority acting in accordance with the present Convention; or

(d) When it is claimed that a coastal State has manifestly failed to comply with specified conditions established by the present Convention relating to the exercise of its rights or performance of its duties in respect of living resources, provided that in no case shall the sovereign rights of the coastal State be called in question.

2. Any dispute excluded by paragraph 1 may be submitted to the procedure specified in section 2 only with the express consent of the coastal State concerned.

3. Any disagreement between the parties to a dispute as to the applicability of this article shall be decided in accordance with paragraph 3 of article 10.

Article 18

Optional exceptions

1. A Contracting Party when ratifying or otherwise expressing its consent to be bound by the present Convention, or at any time thereafter, may declare that it does not accept any one or more of the procedures for the settlement of disputes specified in Section 2 with respect to one or more of the following categories of disputes:

(a) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles, provided that the State making such a declaration shall indicate therein a regional or other third party procedure, entailing a binding decision, which it accepts for the settlement of such disputes;

(b) Disputes concerning military activities, including those by government vessels and aircraft engaged in non-commercial service, provided that law enforcement activities pursuant to the present Convention shall not be considered military activities;

(c) Disputes in respect of which the Security Council of the United Nations, while exercising the functions assigned to it by the Charter of the United Nations, determines that specified proceedings under the present Convention interfere with the exercise of such functions in a particular case.

2. Any disagreement between the parties to a dispute as to the applicability of this article shall be decided in accordance with paragraph 3 of article 10.

3. A Contracting Party which has made a declaration under paragraph 1 may at any time withdraw it, or agree to submit a dispute excluded by such declaration to a procedure specified in section 2.

4. A Contracting Party which has made a declaration under paragraph 1 shall not be entitled to submit any dispute falling within the excepted category to any procedure in section 2 as against any other Contracting Party, without the consent of that party.

5. If one of the Contracting Parties has made a declaration under subparagraph 1 (a) of this article, any other Contracting Party may submit any excepted category of dispute against the declarant party to the procedure specified in such declaration.

ANNEX I Conciliation

Article 1

Institution of proceedings

Subject to the provisions of article 6 of this part, any party to a dispute may submit the dispute to the conciliation pro-

cedure provided for in this annex by notification addressed to the other party or parties to the dispute.

Article 2

List of conciliators

A list of conciliators shall be drawn up and maintained by the Secretary-General of the United Nations. Every Contracting Party shall be entitled to nominate four conciliators, each of whom shall be a person enjoying the highest reputation for fairness, competence and integrity. The names of the persons so nominated shall constitute the list. If at any time the conciliators nominated by a Contracting Party in the list so constituted shall be less than four, that Contracting Party shall be entitled to make further nominations as necessary. The name of a conciliator shall remain on the list until withdrawn by the party which made the nomination, provided that such conciliator shall continue to serve on any conciliation commission for which that conciliator has been chosen until the completion of the proceedings before that Commission.

Article 3

Constitution of Conciliation Commission

The Conciliation Commission shall, unless the parties otherwise agree, be constituted as follows:

1. Subject to the provisions of paragraph 7, the Conciliation Commission shall consist of five members.

2. The party submitting the dispute to conciliation shall appoint two conciliators to be chosen preferably from the list and who may be its nationals. Such appointments shall be included in the notification under article 1.

3. The other party to the dispute shall appoint two conciliators in the same manner within 21 days of receipt of notification under article 1. If the appointments are not made within the prescribed period, the party which submitted the dispute to conciliation may, within one week of the expiration of the prescribed period, either terminate the proceedings by notification addressed to the other party or request the Secretary-General to make the appointments in accordance with paragraph 5.

4. Within 30 days following the date of the last of their own appointment, the four conciliators shall appoint a fifth conciliator chosen from the list, who shall be chairman. If the appointment is not made within the prescribed period, either party may, within one week of the expiration of the prescribed period, terminate the proceedings by notification addressed to the other party or, where the proceedings are not so terminated, request the Secretary-General to make the appointment in accordance with paragraph 5.

5. Upon the request of a party to the dispute in accordance with paragraphs 3 or 4, the Secretary-General of the United Nations shall make the necessary appointments within 30 days of the receipt of such request. The Secretary-General shall make such appointments from the list referred to in article 2 and in consultation with the parties to the dispute.

6. Any vacancy shall be filled in the manner prescribed for the initial appointment.

7. Parties in the same interest shall appoint two conciliators jointly by agreement. Where there are several parties having separate interests, or where there is disagreement as to whether they are of the same interest, each of them shall appoint one conciliator.

8. In disputes involving more than two parties, the provisions of paragraphs 1 to 6 shall apply to the maximum extent possible.

Article 4

Procedure to be adopted

The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Contracting Party to submit to it its views orally or in writing. Recommendations of the Commission and procedural decisions shall be made by a majority vote of its members.

Article 5

Amicable settlement

The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

Article 6

Functions of the Commission

The Commission shall hear the parties, examine their claims and objections, and make proposals to the parties with a view to reaching an amicable settlement.

Article 7

Report

1. The Commission shall report within 12 months of its constitution. Its report shall record any agreements reached and, failing agreement, its conclusions on all questions of fact or law relevant to the matter in dispute and such recommendations as the Commission may deem appropriate for an amicable settlement of the dispute. The report shall be deposited with the Secretary-General of the United Nations and shall immediately be transmitted by him to the parties to the dispute.

2. The report of the Commission, including any conclusions or recommendations, shall not be binding upon the parties.

Article 8

Termination

The conciliation procedure shall be deemed terminated when a settlement has been reached, when the parties have accepted or one party has rejected the recommendations of the report by notification addressed to the Secretary-General, or when a period of three months has expired from the date of transmission of the report to the parties.

Article 9

Facilities, fees and expenses

The fees and expenses of the Commission shall be borne by the parties to the dispute.

Article 10

Right of parties to vary procedure

The parties to the dispute may by agreement vary any provision of this annex.

ANNEX II Statute of the Law of the Sea Tribunal

Article 1

General provisions

1. The Law of the Sea Tribunal shall be constituted and shall function in accordance with the provisions of the present Convention and this Statute.

2. Any reference of a dispute to the Tribunal shall be subject to the provisions of this part.

SECTION I. ORGANIZATION OF THE TRIBUNAL

Article 2

Composition of Tribunal

1. The Tribunal shall be composed of a body of 21 independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in matters relating to the law of the sea.

2. In the Tribunal as a whole the representation of the principal legal systems of the world and equitable geographical distribution shall be assured.

Article 3

Election of members

1. No two members of the Tribunal may be nationals of the same State, and a person who for the purposes of membership in the Tribunal could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

2. There shall be not less than three members from each geographical group as established by the General Assembly of the United Nations.

Article 4

Procedure for nomination and election

1. Each Contracting Party may nominate not more than two persons having the qualifications prescribed in article 2. The members of the Tribunal shall be elected from a list of persons thus nominated.

2. At least three months before the date of the election, the Secretary-General of the United Nations in the case of the first election and the Registrar of the Tribunal in the case of subsequent elections shall address a written invitation to the Contracting Parties to submit their nominations for members of the Tribunal within two months. He shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the Contracting Parties which have nominated them, and shall submit it to the Contracting Parties before the seventh day of the last month before the date of each election.

3. The first election shall be held within six months of the date of entry into force of the present Convention.

4. Elections of the members of the Tribunal shall be by secret ballot. They shall be held at a meeting of the Contract-

ing Parties convened by the Secretary-General in the case of the first election and by a procedure agreed to by the Contracting Parties in the case of subsequent elections. At that meeting, for which two thirds of the Contracting Parties shall constitute a quorum, the persons elected to the Tribunal shall be those nominees who obtain the largest number of votes and a two-thirds majority of votes of the Contracting Parties present and voting, provided that such majority shall include at least a majority of the Contracting Parties.

Article 5

Term of office

1. The members of the Tribunal shall be elected for nine years and may be re-elected; provided, however, that of the members elected at the first election, the terms of seven members shall expire at the end of three years and the terms of seven more members shall expire at the end of six years.

2. The members of the Tribunal whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lots to be drawn by the Secretary-General of the United Nations immediately after the first election has been completed.

3. The members of the Tribunal shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any proceedings which they may have begun at the time of their replacement.

4. In the case of the resignation of a member of the Tribunal, the resignation shall be addressed to the President of the Tribunal. The place becomes vacant on the receipt of the letter of resignation.

Article 6

Vacancies

1. Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Registrar shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in article 4, and the date of the election shall be fixed by the President of the Tribunal after consultation with Contracting Parties.

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

Article 7

Conditions relating to interests of members

1. No member of the Tribunal may exercise any political or administrative function, or associate actively with or be financially interested in any of the operations of any enterprise concerned with the exploration or exploitation of the resources of the sea or the sea-bed or other commercial use of the sea or the sea-bed.

2. Any doubt on this point shall be decided by a majority of the other members of the Tribunal present.

Article 8

Conditions relating to participation of members in other capacities

1. No member of the Tribunal may act as agent, counsel, or advocate in any case.

2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or in any other capacity.

3. Any doubt on this point shall be decided by a majority of the other members of the Tribunal present.

Article 9

Consequences of ceasing to fulfil conditions

If, in the unanimous opinion of the other members of the Tribunal, a member has ceased to fulfil the required conditions, the President of the Tribunal shall declare the seat vacant.

Article 10

Diplomatic privileges and immunities

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

Article 11

Declaration by members

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

Article 12

President, Vice-President and Registrar

1. The Tribunal shall elect its President and Vice-President for three years; they may be re-elected.

2. The Tribunal shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 13

Seat of Tribunal

1. The seat of the Tribunal shall be determined by the Contracting Parties, provided that the Tribunal shall have the right to sit and exercise its functions elsewhere whenever the Tribunal considers it desirable.

2. The President and the Registrar shall reside at the seat of the Tribunal.

Article 14

Quorum

1. All available members shall sit, but a quorum of nine members shall be required to constitute the Tribunal.

2. Subject to the provisions of article 18, the Tribunal shall determine which members are available to constitute the Tribunal for the consideration of a particular dispute, having regard to the effective functioning of the sea-bed disputes chamber and the special chambers as provided in articles 15 and 16.

3. All disputes and applications submitted to the Tribunal shall be heard and determined by the Tribunal, unless article

15 applies, or the parties request that it shall be dealt with in accordance with article 16.

Article 15

The sea-bed disputes chamber

1. A sea-bed disputes chamber of the Tribunal shall be established for dealing with disputes relating to the interpretation or application of the provisions of part I of the present Convention, or of any rules or regulations enacted thereunder, or of any contract, agreement or arrangement concluded pursuant to, or related to the purposes of, that part.

2. The sea-bed disputes chamber shall be composed of 11 members, selected from among members of the Tribunal in such manner as shall be provided in part I of the present Convention.

3. Notwithstanding any provisions of this Statute to the contrary, the jurisdiction, powers and functions of, and access to, the sea-bed disputes chamber shall be governed by the provisions of part I of the present Convention.

Article 16

Special chambers

1. The Tribunal shall form four chambers, composed of three or more members as the Tribunal may determine, for dealing with disputes concerning the interpretation or application of the articles in the present Convention relating to fisheries, protection and preservation of the marine environment, marine scientific research and navigation. The members of each chamber shall be elected for three years, by the Tribunal from amongst its members, having regard to any special knowledge, expertise or previous experience which any of the members of the Tribunal may have in relation to the category of disputes for which the chamber has been formed. After each election, the Registrar shall communicate to all the Contracting Parties the names of the members of the Tribunal assigned to each chamber.

2. The Tribunal shall form a chamber for dealing with a particular dispute submitted to it if the parties so request. The composition of such a chamber shall be determined by the Tribunal with the approval of the parties.

3. With a view to the speedy dispatch of business, the Tribunal shall form annually a chamber composed of five members which may hear and determine disputes by summary procedure. Two alternative members shall be selected for the purpose of replacing members who are unable to participate in a particular proceeding.

4. Disputes shall be heard and determined by the chambers provided for in this article if the parties so request.

5. A judgement given by any of the chambers provided for in this article and in article 15 shall be considered as rendered by the Tribunal.

Article 17

Rules of Tribunal

The Tribunal shall frame rules for carrying out its functions. In particular it shall lay down rules of procedure.

Article 18

Nationality of members

1. Members of the nationality of any of the parties to a dispute shall retain their right to participate as members of the Tribunal.

2. If the Tribunal hearing any dispute includes a member of the nationality of one of the parties, any other party to the dispute may choose a person to participate as a member of the Tribunal.

3. If the Tribunal hearing does not include a member of the nationality of the parties, each of these parties may proceed to choose a member as provided in paragraph 2.

4. The provisions of this article shall apply to articles 15 and 16. In such cases, the President, in consultation with the parties, shall request specified members of the Tribunal forming the chamber, as many as necessary, to give place to the members of the Tribunal of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the members specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt on this point shall be settled by the decision of the Tribunal.

6. Members chosen as laid down in paragraphs 2, 3 and 4 shall fulfil the conditions required by article 2, paragraph 2 of article 8 and article 11. They shall participate in the decision on terms of complete equality with their colleagues.

Article 19

Remuneration of members

1. Each member of the Tribunal shall receive an annual allowance and, for each day on which he exercises his functions, a special allowance, provided that in any year the total sum payable to any member as special allowance shall not exceed the amount of the annual allowance.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for each day on which he acts as President.

4. The members chosen under article 18, other than members of the Tribunal, shall receive compensation for each day on which they exercise their functions.

5. These allowances and compensation shall be fixed from time to time at a meeting of the Contracting Parties, taking into account the workload of the Tribunal. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed at a meeting of the Contracting Parties on the proposal of the Tribunal.

7. Regulations made at the meeting of the Contracting Parties shall fix the conditions under which retirement pensions may be given to members of the Tribunal and to the Registrar, and the conditions under which members of the Tribunal and Registrar shall have their travelling expenses refunded.

8. The above salaries, allowances, and compensation shall be free of all taxation.

*Article 20**Expenses of Tribunal*

The expenses of the Tribunal shall be borne by the Contracting Parties, and by entities other than Contracting Parties where the present Convention provides access to such entities, on such terms and in such a manner as shall be decided at a meeting of the Contracting Parties.

SECTION 2. COMPETENCE OF THE TRIBUNAL

*Article 21**Parties before Tribunal*

1. Contracting Parties may be parties before the Tribunal.

2. Entities other than Contracting Parties may be parties before the Tribunal in any case expressly provided for in the present Convention, or in accordance with any other agreement conferring jurisdiction on the Tribunal and accepted by all the parties to the dispute.

*Article 22**Access to Tribunal*

1. The Tribunal shall be open to the Contracting Parties. It shall be open to entities other than Contracting Parties in any case provided for in the present Convention or in accordance with any other agreement conferring jurisdiction on the Tribunal and accepted by all the parties to any dispute submitted to the Tribunal.

2. When an entity other than a Contracting Party is a party to a dispute submitted to it, the Tribunal shall fix the amount which that party is to contribute towards the expenses of the Tribunal. This provision shall not apply if such entity is bearing a share of the expenses of the Tribunal.

*Article 23**Jurisdiction*

The jurisdiction of the Tribunal shall comprise all disputes and applications submitted to it in accordance with the present Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

*Article 24**Reference of disputes subject to other agreements*

If all the parties to a treaty or convention already in force and relating to the subject-matter covered by the present Convention so agree, any disputes relating to the interpretation or application of such treaty or convention may, in accordance with such agreement, be submitted to the Tribunal.

*Article 25**Applicable law*

The Tribunal shall decide all disputes and applications submitted to it in accordance with article 15 of this part.

SECTION 3. PROCEDURE

*Article 26**Institution of proceedings*

1. Disputes may be submitted to the Tribunal, as the case may be, either by a written application addressed by a party or parties to the dispute, or by the notification of any special agreement between the parties to the dispute, to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

2. The Registrar shall forthwith communicate the application to all concerned.

3. He shall also notify all Contracting Parties.

*Article 27**Provisional measures*

1. In accordance with article 12 of this part, the Tribunal shall have the power to prescribe provisional measures.

2. If the Tribunal is not in session, or a sufficient number of members are not available to constitute a quorum, the provisional measures shall be prescribed by the chamber of summary procedure to be established under paragraph 3 of article 16 of this Statute. Such provisional measures shall be subject to review and revision by the Tribunal.

*Article 28**Hearing*

1. The hearing shall be under the control of the President or, if he is not able to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

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

*Article 29**Conduct of case*

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

*Article 30**Default of appearance*

When one of the parties does not appear before the Tribunal or fails to defend its case, the other party may request the Tribunal to continue the proceedings and make its decision. Absence or default of a party shall not constitute an impediment to the proceedings. Before making its decision, the Tribunal must satisfy itself not only that it has jurisdiction over the dispute, but also that the decision is well founded in fact and law.

*Article 31**Majority for decision*

1. All questions shall be decided by a majority of the members of the Tribunal who are present.

2. In the event of an equality of votes, the President or the member who acts in his place shall have a casting vote.

Article 32

Judgement

1. The judgement shall state the reasons on which it is based.

2. It shall contain the names of the members of the Tribunal who have taken part in the decision.

3. If the judgement does not represent in whole or in part the unanimous opinion of the members of the Tribunal, any member shall be entitled to deliver a separate opinion.

4. The judgement shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the parties to the dispute.

Article 33

Request to intervene

1. Should a Contracting Party consider that it has an interest of a legal nature which may be affected by the decision in any dispute, it may submit a request to the Tribunal to be permitted to intervene.

2. It shall be for the Tribunal to decide upon this request.

3. If an application to intervene is granted, the decision of the Tribunal in respect of that dispute will be binding upon the applicant in so far as it refers to matters in respect of which that party intervened.

Article 34

Cases of interpretation or application

1. Whenever the interpretation or application of the present Convention is in question, the Registrar shall notify all Contracting Parties forthwith.

2. Whenever the interpretation or application of an international agreement is in question, the Registrar shall notify all parties to the agreement.

3. Every party so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgement will be equally binding upon it.

Article 35

Finality and binding force of decisions

1. The decision of the Tribunal is final and shall be complied with by all the parties to the dispute.

2. Such decision shall have no binding force except between the parties and in respect of that particular dispute.

3. In the event of dispute as to the meaning or scope of the decision, the Tribunal shall construe it upon the request of any party.

Article 36

Costs

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

SECTION 4. AMENDMENT

Article 37

Amendment

1. Amendments to the present Statute shall be effected by the same procedure as provided for amendments to the present Convention.

2. The Tribunal shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Contracting Parties, for consideration in conformity with the provisions of paragraph 1 of this article.

ANNEX III
Arbitration

Article 1

Institution of proceedings

Subject to the provisions of this part, any party to a dispute may submit the dispute to the arbitration procedure provided for in this annex by notification addressed to the other party or parties to the dispute.

Article 2

List of arbitrators

A list of arbitrators shall be drawn up and maintained by the Secretary-General of the United Nations. Every Contracting Party shall be entitled to nominate four arbitrators, each of whom shall be a person experienced in maritime affairs and enjoying the highest reputation for fairness, competence and integrity. The names of the persons so nominated shall constitute the list. If at any time the arbitrators nominated by a Contracting Party in the list so constituted shall be less than four, that Contracting Party shall be entitled to make further nominations as necessary. The name of an arbitrator shall remain on the list until withdrawn by the party which made the nomination, provided that such arbitrator shall continue to serve until the completion of any case in which that arbitrator has begun to serve.

Article 3

Constitution of arbitral tribunal

For the purpose of proceedings under this annex, the arbitral tribunal shall, unless the parties otherwise agree, be constituted as follows:

1. Subject to the provisions of paragraph 7, the arbitral tribunal shall consist of five members. Each party to the dispute shall appoint one member, who shall be chosen preferably from the list and may be its national. In the case of the party requesting arbitration, such appointment shall be made at the time of the request. The other three members shall be appointed by agreement of the parties and shall be chosen preferably from the list and shall be nationals of third States, unless the parties otherwise agree. The parties to the dispute shall appoint the President of the arbitral tribunal from among these three members.

2. The party requesting arbitration shall, at the time of making the request, submit a statement of its claim and the grounds on which such claim is based.

3. Should the other party to the dispute fail to appoint a member within a period of 30 days from the date of receipt of the request for arbitration, the appointment shall be made in

accordance with paragraph 5, at the request of the party which submitted the dispute to arbitration. Such request shall be made within two weeks of the expiry of the aforementioned period of 30 days.

4. If, within a period of 60 days from the date of receipt of the request for arbitration, the parties are unable to reach agreement on the appointment of one or more of the members of the tribunal to be designated jointly, or on the appointment of the President, the remaining appointment or appointments shall be made in accordance with paragraph 5, at the request of a party to the dispute. Such request shall be made within two weeks of the expiry of the aforementioned period of 60 days.

5. Unless the parties agree that any appointment under paragraphs 3 and 4 be made by some person or a third State chosen by the parties, the President of the Law of the Sea Tribunal shall make such appointment. If the President is unable to act under this paragraph, or is a national of one of the parties to the dispute, the appointment shall be made by the next senior member of the Law of the Sea Tribunal who is available and is not a national of one of the parties. The appointments referred to in this paragraph shall be made from the list of arbitrators within a period of 30 days of the receipt of the request and in consultation with the parties. The members so appointed must be of different nationalities and must not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.

6. Vacancies which may occur as a result of death, resignation or any other cause shall be filled in the manner provided for in the original appointments.

7. Parties in the same interest shall appoint one member of the tribunal jointly by agreement. Where there are several parties having separate interests or where there is disagreement as to whether they are of the same interest, each of them shall appoint one member of the tribunal. The number of members of the tribunal appointed separately by the parties shall always be smaller by one than the number of members of the tribunal to be appointed jointly by the parties.

8. In disputes involving more than two parties, the provisions of paragraphs 1 to 6 shall apply to the maximum extent possible.

Article 4

Functions of arbitral tribunal

An arbitral tribunal constituted under article 3 shall function in accordance with the provisions of the present Convention and of this annex.

Article 5

Procedure to be adopted

In the absence of an agreement to the contrary between the parties to the dispute, the arbitral tribunal shall lay down its own procedure assuring to each party a full opportunity to be heard and to present its case.

Article 6

Duties of parties to a dispute

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, in accordance with their law and using all means at their disposal, shall:

(a) Provide the tribunal with all relevant documents, facilities and information; and

(b) Enable the tribunal when necessary to summon and receive the evidence of witnesses or experts and to visit the localities in question.

Article 7

Expenses

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.

Article 8

Required majority for decisions

Decisions of the arbitral tribunal shall be taken by a majority vote of its members. The absence or abstention of less than half of the members shall not constitute an impediment to the tribunal reaching a decision. In the event of an equality of votes, the president shall have a casting vote.

Article 9

Default of appearance

When one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence or default of a party shall not constitute an impediment to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the award is well founded in fact and law.

Article 10

Award

The award of the arbitral tribunal shall be confined to the subject-matter of the dispute, and state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the award. Any member of the tribunal may attach a separate or dissenting opinion to the award.

Article 11

Finality of award

1. The award shall be final and without appeal, unless the parties to the dispute have agreed in advance to an appellate procedure. It shall be complied with by all the parties to the dispute.

Article 12

Interpretation or implementation of award

1. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the award may be submitted by either party for decision to the arbitral tribunal which made the award. For this purpose, any vacancy in the tribunal shall be filled in the manner provided for in the original appointments of the members of the tribunal.

2. Any such controversy may be submitted to another court or tribunal under article 9 of this part by agreement of all the parties to the dispute.

ANNEX IV

Special arbitration procedure

Article 1

Institution of proceedings

Subject to the provisions of this part, any party to a dispute concerning the interpretation or application of the articles of the present Convention relating to fisheries, protection and preservation of the marine environment, marine scientific research, and navigation, may submit the dispute to the special arbitration procedure provided for in this annex by notification addressed to the other party or parties to the dispute.

Article 2

Lists of experts

Separate lists of experts shall be established and maintained in respect of each of the fields of fisheries, protection and preservation of the marine environment, marine scientific research, and navigation. The lists of experts shall be drawn up and maintained, in the field of fisheries by the Food and Agriculture Organization of the United Nations, in the field of protection and preservation of the marine environment by the United Nations Environment Programme, in the field of marine scientific research by the Inter-Governmental Oceanographic Commission, in the field of navigation by the Inter-Governmental Maritime Consultative Organization, or in each case by the appropriate subsidiary body concerned to which such organization, programme or commission has delegated this function. Every Contracting Party shall be entitled to nominate two experts in each field whose competence in the legal, scientific or technical aspects of such field is established and generally recognized, and who enjoy the highest reputation for fairness and integrity. The names of the persons so nominated in each field shall constitute the appropriate list. If at any time the experts nominated by a Contracting Party in any list so constituted shall be less than two, that Contracting Party shall be entitled to make further nominations as necessary. The name of an expert shall remain on the list until withdrawn by the party which made the nomination, provided that such expert shall continue to serve until the completion of any case in which that expert has begun to serve.

Article 3

Constitution of special arbitral tribunal

For the purpose of proceedings under this annex, a special arbitral tribunal shall, unless the parties otherwise agree, be constituted as follows:

1. Subject to the provisions of paragraph 7, the special arbitral tribunal shall consist of five members. Each party to the dispute shall appoint two members, one of whom may be its national, to be chosen preferably from the appropriate list or lists relating to the matters in dispute. The parties to the dispute shall by agreement appoint the President of the special arbitral tribunal who shall be chosen preferably from the appropriate list and shall be a national of a third State, unless the parties otherwise agree.

2. The party requesting special arbitration shall, at the time of making the request, appoint its members and submit a statement of its claim and the grounds on which such claim is based.

3. Should the other party to the dispute fail to appoint its members within a period of 30 days from the date of receipt

of the request for special arbitration, the appointments shall be made in accordance with paragraph 5, at the request of the party which submitted the dispute to arbitration. Such request shall be made within two weeks of the expiry of the aforementioned period of 30 days.

4. If, within a period of 30 days from the date of receipt of the request for special arbitration, the parties are unable to reach agreement on the appointment of the President, such appointment shall be made in accordance with paragraph 5, at the request of a party to the dispute. Such request shall be made within two weeks of the expiry of the aforementioned period of 30 days.

5. Unless the parties agree that any appointment under paragraphs 3 and 4 be made by some person of a third State chosen by the parties, the Secretary-General of the United Nations shall make such appointment, in consultation with the parties to the dispute and the appropriate international inter-governmental organization. The appointments referred to in this paragraph shall be made from the appropriate list or lists of experts within a period of 30 days of the receipt of the request. The members so appointed must be of different nationalities and must not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.

6. Vacancies which may occur as a result of death, resignation or any other cause shall be filled in the manner provided for in the original appointments.

7. Parties in the same interest shall appoint two members of the tribunal jointly by agreement. Where there are several parties having separate interests or where there is disagreement as to whether they are of the same interest, each of them shall appoint one member of the tribunal.

8. In disputes involving more than two parties, the provisions of paragraphs 1 to 6 shall apply to the maximum extent possible.

Article 4

General provisions

The provisions of articles 4 to 12 of annex III shall apply *mutatis mutandis* to the special arbitration procedure under this annex.

Article 5

Fact finding

1. The parties to a dispute may at any time agree to request a special arbitral tribunal constituted in accordance with article 3, to carry out an inquiry and establish the facts giving rise to any dispute concerning the interpretation or the application of the provisions of the present Convention relating to fisheries, protection and preservation of the marine environment, marine scientific research or navigation.

2. Unless the parties otherwise agree, the findings of fact of the special arbitral tribunal acting in accordance with paragraph 1, shall be considered as conclusive as between the parties. If all the parties to the dispute so request, the special arbitral tribunal may formulate recommendations which, without having the force of a decision, shall only constitute the basis for a review, by the parties concerned, of the questions giving rise to the dispute.

3. Subject to paragraph 2, the special arbitral tribunal shall act in accordance with the preceding provisions of this annex, unless the parties otherwise agree.