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2005

DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA
OFFICE OF LEGAL AFFAIRS

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I. UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Status of the United Nations Convention on the Law of the Sea, of the Agreement relating to the implementation of Part XI of the Convention and of the Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks



































1. Table recapitulating the status of the Convention and of the related Agreements, as at 31 March 2005

State or entity <i>Italicized text indicates non-members of the United Nations;</i> <i>Shaded row indicates landlocked States</i>	United Nations Convention on the Law of the Sea (in force as from 16 November 1994)		Agreement relating to the implementation of Part XI of the Convention (in force as from 28 July 1996)		Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (in force as from 11 December 2001)	
	Signature (☐ - declaration)	Ratification; formal confirmation (fc); accession (a); succession (s); (☐ - declaration)	Signature	Ratification; formal confirmation (fc); accession (a); definitive signature (ds); participation (p); ¹ simplified procedure (sp); ²	Signature (☐ - declaration or statement)	Ratification; accession (a) ³ (☐ - declaration)
TOTALS	157 (☐35)	148 (☐55)	79	121	59 (☐5)	52 (☐24)
Afghanistan						
Albania		23 June 2003 (a)		23 June 2003 (p)		
Algeria	☐	☐11 June 1996	☐	11 June 1996 (p)		
Andorra						
Angola	☐	5 December 1990				
Antigua and Barbuda	☐	2 February 1989				
Argentina	☐	☐1 December 1995	☐	1 December 1995	☐	
Armenia		9 December 2002 (a)		9 December 2002 (a)		
Australia	☐	5 October 1994	☐	5 October 1994	☐	23 December 1999
Austria	☐	☐14 July 1995	☐	14 July 1995	☐	☐19 December 2003
Azerbaijan						

¹ States bound by the Agreement by having ratified, acceded or succeeded to the Convention under article 4, paragraph 1, of the Agreement.

² States bound by the Agreement under the simplified procedure set out in article 5 of the Agreement.

³ In accordance with its article 40, the Agreement shall enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.

<p>State or entity</p> <p><i>Italicized text</i> indicates non-members of the United Nations; Shaded row indicates landlocked States</p>	<p>United Nations Convention on the Law of the Sea (in force as from 16 November 1994)</p> <p>Signature  (☐ - declaration)</p>	<p>Agreement relating to the implementation of Part XI of the Convention (in force as from 28 July 1996)</p> <p>Signature </p>	<p>Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (in force as from 11 December 2001)</p> <p>Signature  (☐ - declaration or statement)</p>
Bahamas	 29 July 1983	 28 July 1995	 16 January 1997(a)
Bahrain	 30 May 1985		
Bangladesh	 27 July 2001	 27 July 2001 (a)	
Barbados	 12 October 1993	 28 July 1995 (sp)	 22 September 2000(a)
Belarus	<input type="checkbox"/> 13 November 1998		
Belgium	<input type="checkbox"/> 13 August 1983		<input type="checkbox"/> 19 December 2003
Belize	 16 October 1997		
Benin			
Bhutan			
Bolivia	<input type="checkbox"/> 28 April 1995		
Bosnia and Herzegovina	 12 January 1994 (s)		
Botswana	 2 May 1990		 8 March 2000
Brazil	<input type="checkbox"/> 22 December 1988		
Brunei Darussalam	 5 November 1996		
Bulgaria	 15 May 1996		
Burkina Faso	 25 January 2005		
Burundi			
Cambodia			
Cameroon	19 November 1985		
Canada	7 November 2003		<input type="checkbox"/> 3 August 1999
Cape Verde	<input type="checkbox"/> 10 August 1987		
Central African Republic			
Chad			
Chile	<input type="checkbox"/> 25 August 1997		
China	<input type="checkbox"/> 7 June 1996		25 August 1997 (a) 7 June 1996 (p)
Colombia			
Comoros	21 June 1994		
Congo			
Cook Islands	15 February 1995		15 February 1995 (a) 1 April 1999 (a)

State or entity	United Nations Convention on the Law of the Sea (in force as from 16 November 1994)	Agreement relating to the implementation of Part XI of the Convention (in force as from 28 July 1996)	Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (in force as from 11 December 2001)
<i>Italicized text</i> indicates non-members of the United Nations; <i>Shaded row</i> indicates landlocked States	Signature (☐ - declaration)	Signature (☐ - declaration or statement)	Signature (☐ - declaration or statement)
Ratification; formal confirmation(fc); accession(a); succession(s); (☐ - declaration)	Ratification; formal confirmation(fc); accession(a); definitive signature(ds); participation(p); ¹ simplified procedure (sp); ²	Ratification; formal confirmation(fc); accession(a); definitive signature(ds); participation(p); ¹ simplified procedure (sp); ²	Ratification; accession(a) ³ (☐ - declaration)
Costa Rica	☐ 21 September 1992	☐ 20 September 2001 (a)	☐ 18 June 2001 (a)
Côte d'Ivoire	☐ 26 March 1984	☐ 28 July 1995 (sp)	
Croatia	☐ 5 April 1995 (s)	☐ 5 April 1995 (p)	
Cuba	☐ 15 August 1984	☐ 17 October 2002 (a)	
Cyprus	☐ 12 December 1988	☐ 27 July 1995	☐ 25 September 2002 (a)
Czech Republic	☐ 21 June 1996	☐ 21 June 1996	
Democratic People's Republic of Korea			
Democratic Republic of the Congo	☐ 17 February 1989		
Denmark	☐ 16 November 2004	☐ 16 November 2004	☐ 19 December 2003
Djibouti	☐ 8 October 1991		
Dominica	☐ 24 October 1991		
Dominican Republic			
Ecuador			
Egypt	☐ 26 August 1983		
El Salvador			
Equatorial Guinea	☐ 21 July 1997	☐ 21 July 1997 (p)	
Eritrea			
Estonia			
Ethiopia			
European Community	☐ 1 April 1998 (fc)	☐ 1 April 1998 (fc)	☐ 19 December 2003
Fiji	☐ 10 December 1982	☐ 28 July 1995	☐ 12 December 1996
Finland	☐ 21 June 1996	☐ 21 June 1996	☐ 19 December 2003
France	☐ 11 April 1996	☐ 11 April 1996	☐ 19 December 2003
Gabon	☐ 11 March 1998	☐ 11 March 1998 (p)	
Gambia	☐ 22 May 1984		
Georgia	☐ 21 March 1996 (a)	☐ 21 March 1996 (p)	
Germany	☐ 14 October 1994 (a)	☐ 14 October 1994	☐ 19 December 2003
Ghana	☐ 7 June 1983		

State or entity	United Nations Convention on the Law of the Sea (in force as from 16 November 1994)	Agreement relating to the implementation of Part XI of the Convention (in force as from 28 July 1996)	Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (in force as from 11 December 2001)
<i>Italicized text</i> indicates non-members of the United Nations;	Signature (☐ - declaration)	Signature	Signature (☐ - declaration or statement)
Shaded row indicates landlocked States	Ratification; formal confirmation(fc); accession(a); succession(s); (☐ - declaration)	Ratification; formal confirmation(fc); accession(a); definitive signature(ds); participation(p); ¹ simplified procedure (sp); ²	Ratification; accession(a) ² (☐ - declaration)
Greece	☐ 21 July 1995	21 July 1995	☐ 19 December 2003
Grenada	☐ 25 April 1991	28 July 1995 (sp)	
Guatemala	☐ 11 February 1997	11 February 1997 (p)	
Guinea	☐ 6 September 1985	28 July 1995 (sp)	
Guinea-Bissau	☐ 25 August 1986		
Guyana	☐ 16 November 1993		
Haiti	☐ 31 July 1996	31 July 1996 (p)	
<i>Holy See</i>			
Honduras	☐ 5 October 1993	28 July 2003 (a)	
Hungary	☐ 5 February 2002	5 February 2002 (a)	
Iceland	☐ 21 June 1985	28 July 1995 (sp)	14 February 1997
India	☐ 29 June 1995	29 June 1995	☐ 19 August 2003 (a)
Indonesia	☐ 3 February 1986	2 June 2000	17 April 1998 (a)
Iran (Islamic Republic of)			
Iraq	☐ 30 July 1985		
Ireland	☐ 21 June 1996	21 June 1996	☐ 19 December 2003
Israel			
Italy	☐ 13 January 1995	13 January 1995	☐ 19 December 2003
Jamaica	☐ 21 March 1983	28 July 1995 (sp)	
Japan	☐ 20 June 1996	20 June 1996	
Jordan	☐ 27 November 1995 (a)	27 November 1995 (p)	
Kazakhstan			
Kenya	☐ 2 March 1989	29 July 1994 (ds)	13 July 2004 (a)
Kiribati	☐ 24 February 2003 (a)	24 February 2003 (p)	
Kuwait	☐ 2 May 1986	2 August 2002 (a)	
Kyrgyzstan			
Lao People's Democratic Republic	☐ 5 June 1998	5 June 1998 (p)	
Latvia	☐ 23 December 2004 (a)	23 December 2004 (a)	



State or entity	United Nations Convention on the Law of the Sea (in force as from 16 November 1994)	Agreement relating to the implementation of Part XI of the Convention (in force as from 28 July 1996)	Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (in force as from 11 December 2001)
<i>Italicized text</i> indicates non-members of the United Nations; Shaded row indicates landlocked States	Ratification; formal confirmation(fc); accession(a); succession(s); (□ - declaration)	Ratification; formal confirmation(fc); accession(a); definitive signature(ds); participation(p); ¹ simplified procedure (sp); ²	Signature (□ - declaration or statement)
Lebanon	5 January 1995	5 January 1995 (p)	
Lesotho			
Liberia			
Libyan Arab Jamahiriya			
Liechtenstein			
Lithuania	□12 November 2003 (a)	12 November 2003 (a)	
Luxembourg	5 October 2000	5 October 2000	✍ 19 December 2003
Madagascar	22 August 2001	22 August 2001 (p)	
Malawi			
Malaysia	□14 October 1996	14 October 1996 (p)	
Maldives	7 September 2000	7 September 2000	✍ 30 December 1998
Mali	□16 July 1985		
Malta	□20 May 1993	26 June 1996	□11 November 2001(a)
Marshall Islands	9 August 1991 (a)		✍ 19 March 2003
Mauritania	17 July 1996	17 July 1996 (p)	✍
Mauritius	4 November 1994	4 November 1994 (p)	□25 March 1997(a)
Mexico	18 March 1983	10 April 2003 (a)	
Micronesia (Federated States of)	29 April 1991 (a)	6 September 1995	✍ 23 May 1997
Monaco	20 March 1996	20 March 1996 (p)	9 June 1999(a)
Mongolia	13 August 1996	13 August 1996 (p)	
Morocco			✍
Mozambique	13 March 1997	13 March 1997 (a)	
Myanmar	21 May 1996	21 May 1996 (a)	
Namibia	18 April 1983	28 July 1995 (sp)	✍ 8 April 1998
Nauru	23 January 1996	23 January 1996 (p)	10 January 1997(a)
Nepal	2 November 1998	2 November 1998 (p)	
Netherlands	□28 June 1996	28 June 1996	□19 December 2003
New Zealand	19 July 1996	19 July 1996	✍ 18 April 2001
Nicaragua	□3 May 2000	3 May 2000 (p)	

State or entity	United Nations Convention on the Law of the Sea (in force as from 16 November 1994)	Agreement relating to the implementation of Part XI of the Convention (in force as from 28 July 1996)	Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (in force as from 11 December 2001)
<i>Italicized text</i> indicates non-members of the United Nations; <i>Shaded row</i> indicates landlocked States	Signature (☐ - declaration)	Signature (☐ - formal confirmation; formal accession(a); definitive signature(ds); participation(p); ¹ simplified procedure (sp); ²	Signature (☐ - declaration or statement)
Ratification; formal confirmation(fc); accession(a); successions(s); (☐ - declaration)	Ratification; formal confirmation(fc); accession(a); definitive signature(ds); participation(p); ¹ simplified procedure (sp); ²	Ratification; formal confirmation(fc); accession(a); definitive signature(ds); participation(p); ¹ simplified procedure (sp); ²	Ratification; accession(a) ³ (☐ - declaration)
Niger			
Nigeria	☐ 14 August 1986	☐ 28 July 1995 (sp)	
Niue			
Norway	☐ 24 June 1996	☐ 24 June 1996 (a)	☐ 30 December 1996
Oman	☐ 17 August 1989	☐ 26 February 1997 (a)	
Pakistan	☐ 26 February 1997	☐ 26 February 1997 (p)	
Palau	☐ 30 September 1996 (a)	☐ 30 September 1996 (p)	
Panama	☐ 1 July 1996	☐ 1 July 1996 (p)	
Papua New Guinea	☐ 14 January 1997	☐ 14 January 1997 (p)	☐ 4 June 1999
Paraguay	☐ 26 September 1986	☐ 10 July 1995	
Peru			
Philippines	☐ 8 May 1984	☐ 23 July 1997	
Poland	☐ 13 November 1998	☐ 13 November 1998	
Portugal	☐ 3 November 1997	☐ 3 November 1997	☐ 19 December 2003
Qatar	☐ 9 December 2002	☐ 9 December 2002 (p)	
Republic of Korea	☐ 29 January 1996	☐ 29 January 1996	
Republic of Moldova			
Romania	☐ 17 December 1996	☐ 17 December 1996 (a)	
Russian Federation	☐ 12 March 1997	☐ 12 March 1997 (a)	☐ 4 August 1997
Rwanda			
Saint Kitts and Nevis	☐ 7 January 1993		
Saint Lucia	☐ 27 March 1985		☐ 9 August 1996
Saint Vincent and the Grenadines	☐ 1 October 1993		
Samoa	☐ 14 August 1995	☐ 14 August 1995 (p)	☐ 25 October 1996
San Marino			
Sao Tome and Principe	☐ 3 November 1987		
Saudi Arabia	☐ 24 April 1996	☐ 24 April 1996 (p)	
Senegal	☐ 25 October 1984	☐ 25 July 1995	☐ 30 January 1997

State or entity	United Nations Convention on the Law of the Sea (in force as from 16 November 1994)	Agreement relating to the implementation of Part XI of the Convention (in force as from 28 July 1996)	Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (in force as from 11 December 2001)
<i>Italicized text</i> indicates non-members of the United Nations; <i>Shaded row</i> indicates landlocked States	Signature (☐ - declaration)	Signature	Signature (☐ - declaration or statement)
	Ratification; formal confirmation(fc); accession(a); succession(s); (☐ - declaration)	Ratification; formal confirmation(fc); accession(a); definitive signature(ds); participation(p); ¹ simplified procedure (sp); ²	Ratification; accession(a) ² (☐ - declaration)
Serbia and Montenegro	☐12 March 2001 (s)	28 July 1995 (sp) ²	
Seychelles	16 September 1991	15 December 1994	20 March 1998
Sierra Leone	12 December 1994	12 December 1994 (p)	
Singapore	17 November 1994	17 November 1994 (p)	
Slovakia	8 May 1996	8 May 1996	
Slovenia	☐16 June 1995 (s)	16 June 1995	
Solomon Islands	23 June 1997	23 June 1997 (p)	13 February 1997(a)
Somalia	24 July 1989		
South Africa	☐23 December 1997	23 December 1997	14 August 2003 (a)
Spain	☐15 January 1997	15 January 1997	☐19 December 2003
Sri Lanka	19 July 1994	28 July 1995 (sp)	24 October 1996
Sudan	23 January 1985		
Suriname	9 July 1998	9 July 1998 (p)	
Swaziland			
Sweden	☐25 June 1996	25 June 1996	☐19 December 2003
Switzerland			
Syrian Arab Republic			
Tajikistan			
Thailand			
The former Yugoslav Republic of Macedonia	19 August 1994 (s)	19 August 1994 (p)	
Timor-Leste			
Togo	16 April 1985	28 July 1995 (sp)	

⁴ The former Yugoslavia had signed and ratified the Convention on 10 December 1982 and 5 May 1986, respectively.

⁵ The former Yugoslavia had signed the Agreement and notified the Secretary-General that it had selected the application of the simplified procedure set out in articles 4 (3) (c) and 5 of the Agreement, on 12 May 1995 and 28 July 1995, respectively. On 12 March 2001, the Secretary-General received from the Government of Yugoslavia a notification confirming the signature and the notification of application of the simplified procedure under article 5. As of 4 February 2003, the country name of the Federal Republic of Yugoslavia has changed to Serbia and Montenegro.

State or entity <i>Italicized text</i> indicates non-members of the United Nations; Shaded row indicates landlocked States	United Nations Convention on the Law of the Sea (in force as from 16 November 1994)	Agreement relating to the implementation of Part XI of the Convention (in force as from 28 July 1996)	Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (in force as from 11 December 2001)
Tonga	Signature  <input type="checkbox"/> - declaration (declaration)	Ratification; formal confirmation(fc); accession(a); definitive signature(ds); participation(p); ¹ simplified procedure (sp); ²	Signature  <input type="checkbox"/> - declaration or statement)
Trinidad and Tobago	Ratification; formal confirmation(fc); accession(a); declaration)	2 August 1995 (a)	Ratification; accession(a) ² <input type="checkbox"/> - declaration)
Tunisia	25 April 1986 <input type="checkbox"/> 24 April 1985	2 August 1995 (p) 28 July 1995 (sp) 24 May 2002	31 July 1996
Turkey			
Turkmenistan			
Tuvalu	9 December 2002	9 December 2002 (p)	
Uganda	9 November 1990	28 July 1995 (sp)	27 February 2003
Ukraine	<input type="checkbox"/> 26 July 1999	26 July 1999	
United Arab Emirates	<input type="checkbox"/>		
United Kingdom	<input type="checkbox"/> 25 July 1997 (a)	25 July 1997	<input type="checkbox"/> 10 December 2001 ⁶

⁶ On 19 December 2003, an instrument of ratification was lodged by the United Kingdom of Great Britain and Northern Ireland (on behalf of the United Kingdom of Great Britain and Northern Ireland).

It will be recalled that on 4 December 1995, the Agreement was signed by the Government of the United Kingdom of Great Britain and Northern Ireland on behalf of Bermuda, British Indian Ocean Territory, British Virgin Islands, Falkland Islands, Pitcairn Islands, South Georgia and the South Sandwich Islands, St. Helena including Ascension Island, and Turks and Caicos Islands.

Subsequently, on 27 June 1996, the Agreement was signed by the United Kingdom for the United Kingdom of Great Britain and Northern Ireland.

On 3 December 1999, an instrument of ratification was lodged by the United Kingdom on behalf of Pitcairn, Henderson, Ducie and Oeno Islands, Falkland Islands, South Georgia and South Sandwich Islands, Bermuda, Turks and Caicos Islands, British Indian Ocean Territory, British Virgin Islands and Anguilla, with declarations.

Upon a request for clarification as to why the above ratification excluded the metropolitan territory of the United Kingdom of Great Britain and Northern Ireland, and subsequent consultations, the following additional declaration was provided by the United Kingdom of Great Britain and Northern Ireland on 10 December 2001:

"1. The United Kingdom is a keen supporter of the Straddling Fish Stocks Agreement. Legislation of the European Communities (Council decision 10176/97 of 8 June 1998) binds the United Kingdom as a matter of EC law to deposit its instrument of ratification in relation to the metropolitan territory simultaneously with the European Community and the other Member States.

It is hoped that this event will take place later this year. The constraints imposed by that Council decision only apply in respect of the United Kingdom metropolitan territory and those overseas territories to which the EC treaties apply.

State or entity	United Nations Convention on the Law of the Sea (in force as from 16 November 1994)	Agreement relating to the implementation of Part XI of the Convention (in force as from 28 July 1996)	Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (in force as from 11 December 2001)
<i>Italicized text</i> indicates non-members of the United Nations; <i>Shaded row</i> indicates landlocked States	Signature (☐ - declaration)	Signature	Signature (☐ - declaration or statement)
United Republic of Tanzania	☐ 30 September 1985	☐ 25 June 1998	☐ 21 August 1996
United States of America			
Uruguay	☐ 10 December 1992		☐ 10 September 1999
Uzbekistan			
Vanuatu	10 August 1999	10 August 1999(p)	
Venezuela (Bolivarian Republic of)			
Viet Nam	☐ 25 July 1994		
Yemen	☐ 21 July 1987		
Zambia	7 March 1983	28 July 1995 (sp)	
Zimbabwe	24 February 1993	28 July 1995 (sp)	
TOTALS	157 (☐35)	79	59 (☐5)

“2. In the light of its temporary inability to ratify the Agreement in relation to the metropolitan territory, and the strong desire of the United Kingdom to implement the Agreement in respect of those overseas territories to which the EC treaty does not apply, because of the advantages it will bring to them, the United Kingdom lodged its instrument of ratification to the Agreement, with declarations, in respect of those overseas territories on 3 December 1999.

“3. The United Kingdom is concerned that upon entry into force of the Agreement, the overseas territories covered by this ratification should enjoy the rights and obligations accruing under the Agreement. I would therefore be grateful if you would arrange for the above formal declaration to be circulated in order in order to make it clear to all concerned the nature of the United Kingdom's approach to ratification of this convention. ...”

Accordingly, the above action was accepted in deposit on 10 December 2001, the date on which the second declaration was lodged with the Secretary-General.

2. Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements, as at 31 March 2005

(a) The Convention

1. Fiji (10 December 1982)
2. Zambia (7 March 1983)
3. Mexico (18 March 1983)
4. Jamaica (21 March 1983)
5. Namibia (18 April 1983)
6. Ghana (7 June 1983)
7. Bahamas (29 July 1983)
8. Belize (13 August 1983)
9. Egypt (26 August 1983)
10. Côte d'Ivoire (26 March 1984)
11. Philippines (8 May 1984)
12. Gambia (22 May 1984)
13. Cuba (15 August 1984)
14. Senegal (25 October 1984)
15. Sudan (23 January 1985)
16. Saint Lucia (27 March 1985)
17. Togo (16 April 1985)
18. Tunisia (24 April 1985)
19. Bahrain (30 May 1985)
20. Iceland (21 June 1985)
21. Mali (16 July 1985)
22. Iraq (30 July 1985)
23. Guinea (6 September 1985)
24. United Republic of Tanzania (30 September 1985)
25. Cameroon (19 November 1985)
26. Indonesia (3 February 1986)
27. Trinidad and Tobago (25 April 1986)
28. Kuwait (2 May 1986)
29. Nigeria (14 August 1986)
30. Guinea-Bissau (25 August 1986)
31. Paraguay (26 September 1986)
32. Yemen (21 July 1987)
33. Cape Verde (10 August 1987)
34. São Tomé and Príncipe (3 November 1987)
35. Cyprus (12 December 1988)
36. Brazil (22 December 1988)
37. Antigua and Barbuda (2 February 1989)
38. Democratic Republic of the Congo (17 February 1989)
39. Kenya (2 March 1989)
40. Somalia (24 July 1989)
41. Oman (17 August 1989)
42. Botswana (2 May 1990)
43. Uganda (9 November 1990)
44. Angola (5 December 1990)
45. Grenada (25 April 1991)
46. Micronesia (Federated States of) (29 April 1991)
47. Marshall Islands (9 August 1991)
48. Seychelles (16 September 1991)
49. Djibouti (8 October 1991)
50. Dominica (24 October 1991)
51. Costa Rica (21 September 1992)
52. Uruguay (10 December 1992)
53. Saint Kitts and Nevis (7 January 1993)
54. Zimbabwe (24 February 1993)
55. Malta (20 May 1993)
56. Saint Vincent and the Grenadines (1 October 1993)
57. Honduras (5 October 1993)
58. Barbados (12 October 1993)
59. Guyana (16 November 1993)
60. Bosnia and Herzegovina (12 January 1994)
61. Comoros (21 June 1994)
62. Sri Lanka (19 July 1994)
63. Viet Nam (25 July 1994)
64. The former Yugoslav Republic of Macedonia (19 August 1994)
65. Australia (5 October 1994)
66. Germany (14 October 1994)
67. Mauritius (4 November 1994)
68. Singapore (17 November 1994)
69. Sierra Leone (12 December 1994)
70. Lebanon (5 January 1995)
71. Italy (13 January 1995)
72. Cook Islands (15 February 1995)
73. Croatia (5 April 1995)
74. Bolivia (28 April 1995)
75. Slovenia (16 June 1995)
76. India (29 June 1995)
77. Austria (14 July 1995)
78. Greece (21 July 1995)
79. Tonga (2 August 1995)
80. Samoa (14 August 1995)
81. Jordan (27 November 1995)
82. Argentina (1 December 1995)
83. Nauru (23 January 1996)
84. Republic of Korea (29 January 1996)
85. Monaco (20 March 1996)
86. Georgia (21 March 1996)
87. France (11 April 1996)

88. Saudi Arabia (24 April 1996)
89. Slovakia (8 May 1996)
90. Bulgaria (15 May 1996)
91. Myanmar (21 May 1996)
92. China (7 June 1996)
93. Algeria (11 June 1996)
94. Japan (20 June 1996)
95. Czech Republic (21 June 1996)
96. Finland (21 June 1996)
97. Ireland (21 June 1996)
98. Norway (24 June 1996)
99. Sweden (25 June 1996)
100. Netherlands (28 June 1996)
101. Panama (1 July 1996)
102. Mauritania (17 July 1996)
103. New Zealand (19 July 1996)
104. Haiti (31 July 1996)
105. Mongolia (13 August 1996)
106. Palau (30 September 1996)
107. Malaysia (14 October 1996)
108. Brunei Darussalam (5 November 1996)
109. Romania (17 December 1996)
110. Papua New Guinea (14 January 1997)
111. Spain (15 January 1997)
112. Guatemala (11 February 1997)
113. Pakistan (26 February 1997)
114. Russian Federation (12 March 1997)
115. Mozambique (13 March 1997)
116. Solomon Islands (23 June 1997)
117. Equatorial Guinea (21 July 1997)
118. United Kingdom of Great Britain and Northern Ireland (25 July 1997)
119. Chile (25 August 1997)
120. Benin (16 October 1997)
121. Portugal (3 November 1997)
122. South Africa (23 December 1997)
123. Gabon (11 March 1998)
124. European Community (1 April 1998)
125. Lao People's Democratic Republic (5 June 1998)
126. Suriname (9 July 1998)
127. Nepal (2 November 1998)
128. Belgium (13 November 1998)
129. Poland (13 November 1998)
130. Ukraine (26 July 1999)
131. Vanuatu (10 August 1999)
132. Nicaragua (3 May 2000)
133. Maldives (7 September 2000)
134. Luxembourg (5 October 2000)
135. Serbia and Montenegro (12 March 2001)
136. Bangladesh (27 July 2001)
137. Madagascar (22 August 2001)
138. Hungary (5 February 2002)
139. Armenia (9 December 2002)
140. Qatar (9 December 2002)
141. Tuvalu (9 December 2002)
142. Kiribati (24 February 2003)
143. Albania (23 June 2003)
144. Canada (7 November 2003)
145. Lithuania (12 November 2003)
146. Denmark (16 November 2004)
147. Latvia (23 December 2004)
148. Burkina Faso (25 January 2005)

(b) Agreement relating to the implementation of Part XI of the Convention

1. Kenya (29 July 1994)
2. The former Yugoslav Republic of Macedonia (19 August 1994)
3. Australia (5 October 1994)
4. Germany (14 October 1994)
5. Belize (21 October 1994)
6. Mauritius (4 November 1994)
7. Singapore (17 November 1994)
8. Sierra Leone (12 December 1994)
9. Seychelles (15 December 1994)
10. Lebanon (5 January 1995)
11. Italy (13 January 1995)
12. Cook Islands (15 February 1995)
13. Croatia (5 April 1995)
14. Bolivia (28 April 1995)
15. Slovenia (16 June 1995)
16. India (29 June 1995)
17. Paraguay (10 July 1995)
18. Austria (14 July 1995)
19. Greece (21 July 1995)
20. Senegal (25 July 1995)
21. Cyprus (27 July 1995)
22. Bahamas (28 July 1995)
23. Barbados (28 July 1995)
24. Côte d'Ivoire (28 July 1995)
25. Fiji (28 July 1995)
26. Grenada (28 July 1995)
27. Guinea (28 July 1995)
28. Iceland (28 July 1995)
29. Jamaica (28 July 1995)
30. Namibia (28 July 1995)
31. Nigeria (28 July 1995)
32. Sri Lanka (28 July 1995)
33. Togo (28 July 1995)
34. Trinidad and Tobago (28 July 1995)
35. Uganda (28 July 1995)
36. Yugoslavia (28 July 1995)
37. Zambia (28 July 1995)
38. Zimbabwe (28 July 1995)
39. Tonga (2 August 1995)

40. Samoa (14 August 1995)
41. Micronesia (Federated States of) (6 September 1995)
42. Jordan (27 November 1995)
43. Argentina (1 December 1995)
44. Nauru (23 January 1996)
45. Republic of Korea (29 January 1996)
46. Monaco (20 March 1996)
47. Georgia (21 March 1996)
48. France (11 April 1996)
49. Saudi Arabia (24 April 1996)
50. Slovakia (8 May 1996)
51. Bulgaria (15 May 1996)
52. Myanmar (21 May 1996)
53. China (7 June 1996)
54. Algeria (11 June 1996)
55. Japan (20 June 1996)
56. Czech Republic (21 June 1996)
57. Finland (21 June 1996)
58. Ireland (21 June 1996)
59. Norway (24 June 1996)
60. Sweden (25 June 1996)
61. Malta (26 June 1996)
62. Netherlands (28 June 1996)
63. Panama (1 July 1996)
64. Mauritania (17 July 1996)
65. New Zealand (19 July 1996)
66. Haiti (31 July 1996)
67. Mongolia (13 August 1996)
68. Palau (30 September 1996)
69. Malaysia (14 October 1996)
70. Brunei Darussalam (5 November 1996)
71. Romania (17 December 1996)
72. Papua New Guinea (14 January 1997)
73. Spain (15 January 1997)
74. Guatemala (11 February 1997)
75. Oman (26 February 1997)
76. Pakistan (26 February 1997)
77. Russian Federation (12 March 1997)
78. Mozambique (13 March 1997)
79. Solomon Islands (23 June 1997)
80. Equatorial Guinea (21 July 1997)
81. Philippines (23 July 1997)
82. United Kingdom of Great Britain and Northern Ireland (25 July 1997)
83. Chile (25 August 1997)
84. Benin (16 October 1997)
85. Portugal (3 November 1997)
86. South Africa (23 December 1997)
87. Gabon (11 March 1998)
88. European Community (1 April 1998)
89. Lao People's Democratic Republic (5 June 1998)
90. United Republic of Tanzania (25 June 1998)
91. Suriname (9 July 1998)
92. Nepal (2 November 1998)
93. Belgium (13 November 1998)
94. Poland (13 November 1998)
95. Ukraine (26 July 1999)
96. Vanuatu (10 August 1999)
97. Nicaragua (3 May 2000)
98. Indonesia (2 June 2000)
99. Maldives (7 September 2000)
100. Luxembourg (5 October 2000)
101. Bangladesh (27 July 2001)
102. Madagascar (22 August 2001)
103. Costa Rica (20 September 2001)
104. Hungary (5 February 2002)
105. Tunisia (24 May 2002)
106. Cameroon (28 August 2002)
107. Kuwait (2 August 2002)
108. Cuba (17 October 2002)
109. Armenia (9 December 2002)
110. Qatar (9 December 2002)
111. Tuvalu (9 December 2002)
112. Kiribati (24 February 2003)
113. Mexico (10 April 2003)
114. Albania (23 June 2003)
115. Honduras (28 July 2003)
116. Canada (7 November 2003)
117. Lithuania (12 November 2003)
118. Denmark (16 November 2004)
119. Latvia (23 December 2004)
120. Botswana (31 January 2005)
121. Burkina Faso (25 January 2005)

(c) Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks

1. Tonga (31 July 1996)
2. Saint Lucia (9 August 1996)
3. United States of America (21 August 1996)
4. Sri Lanka (24 October 1996)
5. Samoa (25 October 1996)
6. Fiji (12 December 1996)
7. Norway (30 December 1996)
8. Nauru (10 January 1997)
9. Bahamas (16 January 1997)
10. Senegal (30 January 1997)
11. Solomon Islands (13 February 1997)
12. Iceland (14 February 1997)
13. Mauritius (25 March 1997)
14. Micronesia (Federated States of) (23 May 1997)
15. Russian Federation (4 August 1997)
16. Seychelles (20 March 1998)
17. Namibia (8 April 1998)
18. Iran (Islamic Republic of) (17 April 1998)

19. Maldives (30 December 1998)
20. Cook Islands (1 April 1999)
21. Papua New Guinea (4 June 1999)
22. Monaco (9 June 1999)
23. Canada (3 August 1999)
24. Uruguay (10 September 1999)
25. Australia (23 December 1999)
26. Brazil (8 March 2000)
27. Barbados (22 September 2000)
28. New Zealand (18 April 2001)
29. Costa Rica (18 June 2001)
30. Malta (11 November 2001)
31. United Kingdom on behalf of Pitcairn, Henderson, Ducie and Oeno Islands, Falkland Islands, South Georgia and South Sandwich Islands, Bermuda, Turks and Caicos Islands, British Indian Ocean Territory, British Virgin Islands and Anguilla (10 December 2001)
32. Cyprus (25 September 2002)
33. Ukraine (27 February 2003)
34. Marshall Islands (19 March 2003)
35. South Africa (14 August 2003)
36. India (19 August 2003)
37. European Community (19 December 2003)
38. Austria (19 December 2003)
39. Belgium (19 December 2003)
40. Denmark (19 December 2003)
41. Finland (19 December 2003)
42. France (19 December 2003)
43. Germany (19 December 2003)
44. Greece (19 December 2003)
45. Ireland (19 December 2003)
46. Italy (19 December 2003)
47. Luxembourg (19 December 2003)
48. Netherlands (19 December 2003)
49. Portugal (19 December 2003)
50. Spain (19 December 2003)
51. Sweden (19 December 2003)
52. Kenya (13 July 2004)

II. LEGAL INFORMATION RELEVANT TO THE UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA

A. United Nations General Assembly resolutions of interest

1. General Assembly resolution 59/24 of 17 November 2004: Oceans and the law of the sea

The General Assembly,

Recalling its resolutions 49/28 of 6 December 1994, 52/26 of 26 November 1997, 54/33 of 24 November 1999, 57/141 of 12 December 2002, 58/240 of 23 December 2003 and other relevant resolutions adopted subsequent to the entry into force of the United Nations Convention on the Law of the Sea (“the Convention”)¹ on 16 November 1994,

Emphasizing the universal and unified character of the Convention and its fundamental importance for the maintenance and strengthening of international peace and security, as well as for the sustainable development of the oceans and seas,

Reaffirming that the Convention sets out the legal framework within which all activities in the oceans and seas must be carried out and is of strategic importance as the basis for national, regional and global action and cooperation in the marine sector, and that its integrity needs to be maintained, as recognized also by the United Nations Conference on Environment and Development in chapter 17 of Agenda 21,²

Noting with satisfaction the tenth anniversary of the entry into force of the Convention on 16 November 2004, and recognizing the pre-eminent contribution provided by the Convention to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and to the promotion of the economic and social advancement of all peoples of the world, in accordance with the purposes and principles of the United Nations as set forth in the Charter of the United Nations,

Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole through an integrated, interdisciplinary and intersectoral approach,

Reaffirming the need to improve cooperation and coordination at all levels, in accordance with the Convention, in order to address all aspects of oceans and seas in an integrated manner and to promote the integrated management and sustainable development of the oceans and seas,

¹ See *The Law of the Sea: Official Texts of the United Nations Convention on the Law of the Sea of 10 December 1982 and of 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 Index and Excerpts from the Final Act of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.97.V.10).

² *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II.

Recalling the essential role of international cooperation and coordination at all levels to support and supplement the efforts of each State in promoting the implementation and observance of the Convention, including the integrated management and sustainable development of coastal and marine areas,

Reiterating the essential need for capacity-building to ensure that all States, especially developing countries, in particular the least developed countries and small island developing States, as well as coastal African States, are able both to implement the Convention and to benefit from the sustainable development of the oceans and seas, as well as to participate fully in global and regional forums and processes dealing with oceans and law of the sea issues,

Recognizing the important role that the competent international organizations have in relation to ocean affairs, in implementing the Convention and in promoting the sustainable development of the oceans and seas,

Emphasizing the need to strengthen the ability of competent international organizations to contribute, at the global, regional, subregional and bilateral levels, through cooperation programmes with Governments, to the development of national capacity in marine science and the sustainable management of the oceans and their resources,

Recalling that marine science, by improving knowledge, through sustained research efforts and the evaluation of monitoring results, and applying such knowledge to management and decision-making, is important for eradicating poverty, contributing to food security, conserving the world's marine environment and resources, helping to understand, predict and respond to natural events, and promoting the sustainable development of the oceans and seas,

Recalling also its decision to establish a regular process under the United Nations for global reporting and assessment of the state of the marine environment, including socio-economic aspects, both current and foreseeable, building on existing regional assessments, in its resolutions 57/141 and 58/240, as recommended by the World Summit on Sustainable Development,³ noting the work of the International Workshop, held in conjunction with the fifth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea ("the Consultative Process") held from 8 to 11 June 2004, reaffirming its support for this objective, and noting the need for cooperation among all States to this end,

Reiterating its concern at the adverse impacts on the marine environment and biodiversity, in particular on vulnerable marine ecosystems, including corals, of human activities, such as overutilization of living marine resources, the use of destructive practices, physical impacts by ships, the introduction of alien invasive species and marine pollution from all sources, including from land-based sources and vessels, in particular through the illegal release of oil and other harmful substances and from dumping, including the dumping of hazardous waste such as radioactive materials, nuclear waste and dangerous chemicals,

³Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002 (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex, para. 36 (b).

Recognizing that hydrographic surveys and nautical charting are critical to the safety of navigation and life at sea, environmental protection, including vulnerable marine ecosystems and the economics of the global shipping industry, and recognizing in this regard that the move towards electronic charting not only provides significantly increased benefits for safe navigation and management of ship movement, but also provides data and information that can be used for sustainable fisheries activities and other sectoral uses of the marine environment, the delimitation of maritime boundaries and environmental protection,

Noting the important role of the Commission on the Limits of the Continental Shelf (“the Commission”) in assisting States parties in the implementation of the Convention, through the examination of submissions by coastal States regarding the outer limits of the continental shelf beyond 200 nautical miles, and also noting the need to ensure the effective functioning of the Commission and its subcommissions, in particular the participation of the members of the Commission in its subcommissions,

Taking note of the report on the work of the fifth meeting of the Consultative Process,⁴ established by the General Assembly in its resolution 54/33 in order to facilitate the annual review by the Assembly of developments in ocean affairs and extended for three years by its resolution 57/141,

Taking note also of the report of the Secretary-General,⁵ and emphasizing in this regard the critical role of the annual comprehensive report of the Secretary-General, which integrates information on developments relating to the implementation of the Convention and the work of the Organization, its specialized agencies and other institutions in the field of ocean affairs and the law of the sea at the global and regional levels, and as a result constitutes the basis for the annual consideration and review of developments relating to ocean affairs and the law of the sea by the General Assembly as the global institution having the competence to undertake such a review,

Noting the responsibilities of the Secretary-General under the Convention and related resolutions of the General Assembly, in particular resolutions 49/28, 52/26 and 54/33, and in this context the increase in responsibilities of the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the Secretariat, in particular in view of the growing involvement of the Division with new developments such as the regular process for the global reporting and assessment of the state of the marine environment, including socio-economic aspects, with increasing capacity-building activities and assistance to the Commission, and the role of the Division in inter-agency coordination and cooperation,

Emphasizing that ships and watercraft of all descriptions and ages hold essential information on the history of humankind and that archaeological heritage is a non-renewable resource, deposited over thousands of years, but vulnerable to destruction through modern technologies,

I

Implementation of the Convention and related agreements and instruments

1. *Calls upon* all States that have not done so, in order to achieve the goal of universal participation, to become parties to the Convention,¹ and the

⁴ A/59/122.

⁵ A/59/62 and Add.1.

Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Agreement”);¹

2. *Reaffirms* the unified character of the Convention;

3. *Calls upon* all States that have not done so to become parties to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (“the Fish Stocks Agreement”);⁶

4. *Once again calls upon* States to harmonize, as a matter of priority, their national legislation with the provisions of the Convention, to ensure the consistent application of those provisions and to ensure also that any declarations or statements that they have made or make when signing, ratifying or acceding to the Convention do not purport to exclude or to modify the legal effect of the provisions of the Convention in their application to the State concerned and to withdraw any such declarations or statements;

5. *Calls upon* States parties to the Convention to deposit with the Secretary-General charts or lists of geographical coordinates, as provided for in the Convention;

6. *Requests* the Secretary-General to improve the existing Geographic Information System for the deposit by States of charts and geographical coordinates concerning maritime zones, including lines of delimitation, submitted in compliance with the Convention, and to give due publicity thereto, in particular by implementing, in cooperation with relevant international organizations, such as the International Hydrographic Organization, the technical standards for the collection, storage and dissemination of the information deposited, in order to ensure compatibility among the Geographic Information System, electronic nautical charts and other systems developed by these organizations;

7. *Urges* all States to cooperate, directly or through competent international bodies, in taking measures to protect and preserve objects of an archaeological and historical nature found at sea, in conformity with article 303 of the Convention;

II

Capacity-building

8. *Calls upon* bilateral and multilateral donor agencies and international financial institutions to keep their programmes systematically under review to ensure the availability in all States, particularly in developing States, of the economic, legal, navigational, scientific and technical skills necessary for the full implementation of the Convention and the objectives of the present resolution as well as the sustainable development of the oceans and seas nationally, regionally and globally, and in so doing to bear in mind the rights of landlocked developing States;

9. *Encourages* intensified efforts to build capacity for developing countries, in particular for the least developed countries and small island developing States, as well as coastal African States, to improve hydrographic

⁶ *International Fisheries Instruments with Index* (United Nations publication, Sales No. E.98.V.11), sect. I; see also A/CONF.164/37.

services and the production of nautical charts, including the mobilization of resources and building of capacity with support from international financial institutions and the donor community, recognizing that economies of scale can apply in some instances at the regional level through shared facilities, technical capabilities and information for the provision of hydrographic services and the preparation of and access to nautical charts;

10. *Calls upon* States and international financial institutions, including through bilateral, regional and global cooperation programmes and technical partnerships, to continue to strengthen capacity-building activities, in particular in developing countries, in the field of marine scientific research by, inter alia, training the necessary skilled personnel, providing the necessary equipment, facilities and vessels and transferring environmentally sound technologies;

11. *Encourages* the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization to continue to disseminate and implement the Criteria and Guidelines on the Transfer of Marine Technology, approved by the Assembly of the Oceanographic Commission at its twenty-second session, in 2003;²

12. *Encourages* States to assist developing States, and especially the least developed States and small island developing States, as well as coastal African States, on a bilateral and, where appropriate, regional level, in the preparation of submissions to the Commission, including the assessment of the nature of the continental shelf of a coastal State made in the form of a desktop study, and the mapping of the outer limits of its continental shelf;

III

Trust funds and fellowships

13. *Welcomes* recent capacity-building initiatives, and in this context takes note with satisfaction of the conclusion of an arrangement between the United Nations and the Food and Agriculture Organization of the United Nations regarding the administration of the Assistance Fund established under Part VII of the Fish Stocks Agreement, and the conclusion of a capacity-building trust fund project agreement between the United Nations and the Nippon Foundation of Japan, focusing on human resources development for developing coastal States parties and non-parties to the Convention in the field of ocean affairs and the law of the sea or related disciplines;

14. *Recognizes* the importance of assisting developing States, in particular the least developed States and small island developing States, in implementing the Convention, and urges States, intergovernmental organizations and agencies, national institutions, non-governmental organizations and international financial institutions, as well as natural and juridical persons, to make voluntary financial or other contributions to the trust funds, as referred to in resolution 57/141, established for this purpose;

15. *Also recognizes* the importance of the Hamilton Shirley Amerasinghe Memorial Fellowship Programme on the Law of the Sea established by the General Assembly in its resolution 35/116 of 10 December 1980, and urges Member States and others in a position to do so to contribute to the further development of the Fellowship Programme;

² Intergovernmental Oceanographic Commission, document IOC-XXII/2 Annex 12 rev.

IV

Meeting of States Parties

16. *Takes note* of the report of the fourteenth Meeting of States Parties to the Convention;⁸

17. *Requests* the Secretary-General to convene the fifteenth Meeting of States Parties to the Convention in New York from 16 to 24 June 2005 and to provide the services required;

V

Settlement of disputes

18. *Notes with satisfaction* the continued and significant contribution of the International Tribunal for the Law of the Sea (“the Tribunal”) to the peaceful settlement of disputes in accordance with Part XV of the Convention, and underlines the important role and authority of the Tribunal concerning the interpretation or application of the Convention and the Agreement;

19. *Equally pays tribute* to the important and long-standing role of the International Court of Justice with regard to the peaceful settlement of disputes concerning the law of the sea;

20. *Encourages* States parties to the Convention that have not yet done so to consider making a written declaration choosing from the means set out in article 287 of the Convention for the settlement of disputes concerning the interpretation or application of the Convention and the Agreement;

21. *Recalls* the obligation under article 296 of the Convention requiring all parties to a dispute before a court or a tribunal referred to in article 287 of the Convention to comply promptly with any decisions rendered by such court or tribunal;

22. *Encourages* States parties to the Convention that have not yet done so to nominate conciliators and arbitrators in accordance with annexes V and VII to the Convention, and requests the Secretary-General to continue to update and circulate lists of these conciliators and arbitrators on a regular basis;

VI

The Area

23. *Notes with satisfaction* the progress of the discussions on issues relating to the regulations for prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area, and reiterates the importance of the ongoing elaboration by the International Seabed Authority (“the Authority”), pursuant to article 145 of the Convention, of rules, regulations and procedures to ensure the effective protection of the marine environment, the protection and conservation of the natural resources of the Area and the prevention of damage to its flora and fauna from harmful effects that may arise from activities in the Area;

24. *Takes note* of the Workshop for the establishment of environmental baselines at deep seafloor cobalt-rich crusts and deep seabed polymetallic

⁸ SPLOS/119 and Corr.1.

sulphide mine sites in the Area for the purpose of evaluating the likely effects of exploration and exploitation on the marine environment, held in Kingston from 6 to 10 September 2004;

VII

Effective functioning of the Authority and the Tribunal

25. *Appeals* to all States parties to the Convention to pay their assessed contributions to the Authority and to the Tribunal in full and on time;

26. *Calls upon* States that have not done so to consider ratifying or acceding to the Agreement on the Privileges and Immunities of the Tribunal⁹ and to the Protocol on the Privileges and Immunities of the Authority;¹⁰

VIII

The continental shelf and the work of the Commission

27. *Encourages* States parties to the Convention that are in a position to do so to make every effort to make submissions to the Commission regarding the establishment of the outer limits of the continental shelf beyond 200 nautical miles within the time period established by the Convention, taking into account the decision of the eleventh Meeting of States Parties to the Convention;¹¹

28. *Notes with satisfaction* the progress in the work of the Commission,¹² especially that the consideration of the first submissions regarding the establishment of the outer limits of the continental shelf beyond 200 nautical miles has begun, and that a number of States have advised of their intention to make submissions in the near future;

29. *Approves* the convening by the Secretary-General of the fifteenth session of the Commission in New York from 4 to 22 April 2005, and of the sixteenth session of the Commission from 29 August to 16 September 2005, on the understanding that the second and third weeks of each session will be used by the Commission for a technical examination of submissions at the Geographic Information System Laboratory and other technical facilities at the Division for Ocean Affairs and the Law of the Sea;

30. *Urges* the Secretary-General to take all necessary actions to ensure that the Commission can fulfil the functions entrusted to it under the Convention;

31. *Requests* the Secretary-General to submit to the General Assembly at its sixtieth session proposals on how the requirements of the Commission could be best accommodated, taking into account the concerns expressed in the statement by the Chairman of the Commission at its fourteenth session,¹² regarding the expectation that new submissions will require concomitant meetings of several subcommissions for their examination;

⁹ SPLOS/25.

¹⁰ ISBA/4/A/8, annex.

¹¹ SPLOS/72.

¹² See the statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission (CLCS/42).

32. *Also requests* the Secretary-General, in cooperation with States and relevant international organizations and institutions, to consider developing and making available training courses, based on the outline for a five-day training course¹³ prepared by the Commission in order to facilitate the preparation of submissions in accordance with its Scientific and Technical Guidelines,¹⁴ and welcomes the progress made by the Division for Ocean Affairs and the Law of the Sea in preparing a training manual to assist States in preparation of submissions to the Commission;

33. *Encourages* States to exchange views in order to increase understanding of issues arising from the application of article 76 of the Convention, thus facilitating preparation of submissions by States, in particular developing States, to the Commission, and welcomes initiatives in this regard, including the Conference on Legal and Scientific Aspects of Continental Shelf Limits, held in Reykjavik from 25 to 27 June 2003, the proceedings of which have been published and distributed worldwide;

IX

Maritime safety and security and flag State implementation

34. *Encourages* States to ratify or accede to international agreements addressing the safety and security of navigation and to adopt the necessary measures consistent with the Convention, aimed at implementing and enforcing the rules contained in those agreements;

35. *Welcomes* the adoption by the International Maritime Organization of Guidelines on Places of Refuge for Ships in Need of Assistance,¹⁵ encourages States to draw up plans and to establish procedures to implement those Guidelines, and invites States to participate in the consideration of those instruments by the International Maritime Organization;

36. *Invites* the International Hydrographic Organization and the International Maritime Organization to continue their coordinated efforts, to jointly adopt measures with a view to encouraging greater international cooperation and coordination for the transition to electronic nautical charts and to increase the coverage of hydrographic information on a global basis, especially in the areas of international navigation and ports and where there are vulnerable or protected marine areas;

37. *Welcomes* the adoption by the General Conference of the International Atomic Energy Agency at its forty-eighth session of resolution GC(48)/RES/10, concerning measures to strengthen international cooperation in nuclear, radiation and transport safety and waste management, including those aspects relating to maritime transport,¹⁶ and also welcomes the approval of the Action Plan for the Safety of Transport of Radioactive Materials by the Board of Governors of the Agency in March 2004;

38. *Once again urges* flag States without an effective maritime administration and appropriate legal frameworks to establish or enhance the necessary infrastructure, legislative and enforcement capabilities to ensure

¹³ CLCS/24 and Corr.1.

¹⁴ CLCS/11 and Corr.1 and Add.1 and Corr.1.

¹⁵ International Maritime Organization, Assembly resolution A.949(23).

¹⁶ See International Atomic Energy Agency, *Resolutions and Other Decisions of the General Conference, Forty-eighth Regular Session, 20–24 September 2004* (GC(48)/RES/DEC(2004)).

effective compliance with, and implementation and enforcement of, their responsibilities under international law and, until such action is undertaken, to consider declining the granting of the right to fly their flag to new vessels, suspending their registry or not opening a registry;

39. *Welcomes* the report of the Consultative Group on Flag State Implementation,¹⁷ and invites all concerned organizations to disseminate it widely;

40. *Also welcomes* the progress made by the International Maritime Organization on the establishment and further development of a voluntary International Maritime Organization member State audit scheme, in such a manner as not to exclude the possibility in the future of it becoming mandatory;

41. *Requests* that the Secretary-General report to the General Assembly at its sixty-first session on the study undertaken by the International Maritime Organization in cooperation with other competent international organizations following the invitation extended to it in resolution 58/240 and resolution 58/14 of 24 November 2003 to examine and clarify the role of the “genuine link” in relation to the duty of flag States to exercise effective control over ships flying their flag, including fishing vessels, and the potential consequences of non-compliance with duties and obligations of flag States described in relevant international instruments;

42. *Encourages* relevant international organizations to further develop ideas to devise means of discouraging owners and operators from non-compliance with the requirements imposed by flag States in carrying out their duties and obligations under relevant international instruments;

43. *Welcomes* the progress made by the International Labour Organization in the preparation of a consolidated maritime labour convention;

44. *Recognizes* the important role of port State control in promoting the effective enforcement by flag States of, and compliance by shipowners and charterers with, flag States’ and internationally agreed safety, labour and pollution standards, as well as maritime security regulations and conservation and management measures, and encourages Member States to improve the exchange of appropriate information between port States control authorities;

45. *Invites* the International Maritime Organization to take steps within its mandate to harmonize, coordinate and evaluate port State control in relation to safety and pollution standards, as well as maritime security regulations and, in collaboration with the International Labour Organization, labour standards so as to promote the implementation of globally agreed minimum standards by all States, and invites the Food and Agriculture Organization of the United Nations to continue its work in promoting port State measures in relation to fishing vessels in order to combat illegal, unreported and unregulated fishing;

46. *Calls upon* flag and port States to take all measures consistent with international law necessary to prevent the operation of sub-standard vessels and illegal, unreported and unregulated fishing activities;

47. *Urges* all States, in cooperation with the International Maritime Organization, to combat piracy and armed robbery at sea by adopting measures, including those relating to assistance with capacity-building through

¹⁷ A/59/63.

training of seafarers, port staff and enforcement personnel in the prevention, reporting and investigation of incidents, bringing the alleged perpetrators to justice, in accordance with international law, and by adopting national legislation, as well as providing enforcement vessels and equipment and guarding against fraudulent ship registration;

48. *Welcomes* the progress in regional cooperation in the prevention and suppression of piracy and armed robbery at sea in some geographical areas, and urges States to give urgent attention to promoting, adopting and implementing cooperation agreements, in particular at the regional level in high-risk areas;

49. *Notes* the concerns of the Council and the Secretary-General of the International Maritime Organization with regard to keeping shipping lanes of strategic importance and significance safe and open to international maritime traffic and thereby ensuring the uninterrupted flow of traffic, and welcomes the request of the Council in this regard that the Secretary-General of the International Maritime Organization continue work on the issue in collaboration with parties concerned and report developments to the Council at its next session;¹⁸

50. *Urges* States to become parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol,¹⁹ invites States to participate in the review of those instruments by the Legal Committee of the International Maritime Organization to strengthen the means of combating such unlawful acts, including terrorist acts, and also urges States to take appropriate measures to ensure the effective implementation of those instruments, in particular through the adoption of legislation, where appropriate, aimed at ensuring that there is a proper framework for responses to incidents of armed robbery and terrorist acts at sea;

51. *Welcomes* the entry into force of the International Ship and Port Facility Security Code and related amendments to the International Convention for the Safety of Life at Sea²⁰ on 1 July 2004, as well as the adoption by the International Maritime Organization of the theme “International Maritime Organization 2004: Focus on Maritime Security” for the twenty-seventh World Maritime Day, and urges all States to work with that organization to promote safe and secure shipping while ensuring freedom of navigation;

52. *Also welcomes* the entry into force of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime²¹ and of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,²² and urges States that have not yet done so to become parties to the Protocols and to take appropriate measures to ensure their effective implementation;

¹⁸ Summary of decisions of the Council of the International Maritime Organization at its ninety-second session, document C 92/D, para. 5.3.

¹⁹ International Maritime Organization publication, Sales No. 462.88.12.E.

²⁰ International Maritime Organization, documents SOLAS/CONF.5/32 and 34.

²¹ Resolution 55/25, annex III.

²² *Ibid.*, annex II.

53. *Further welcomes* the adoption by the International Maritime Organization of amendments to the International Convention on Maritime Search and Rescue²³ and to the International Convention for the Safety of Life at Sea²⁴ relating to the delivery of persons rescued at sea to a place of safety and of the associated Guidelines on the Treatment of Persons Rescued at Sea,²⁵

X

Marine environment, marine resources, marine biodiversity and the protection of vulnerable marine ecosystems

54. *Emphasizes once again* the importance of the implementation of Part XII of the Convention in order to protect and preserve the marine environment and its living marine resources against pollution and physical degradation, and calls upon all States to cooperate and take measures, directly or through competent international organizations, for the protection and preservation of the marine environment;

55. *Calls upon* all States that have not yet done so to become parties to and implement the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972,²⁶ and protect and preserve the marine environment from all sources of pollution and take effective measures, according to their scientific, technical and economic capabilities, to prevent, reduce and, where practicable, eliminate pollution caused by dumping or incineration at sea of wastes or other matter;

56. *Welcomes* the adoption by the International Maritime Organization of amendments to the International Convention for the Prevention of Pollution from Ships of 1973, as modified by the Protocol of 1978 relating thereto, providing for the accelerated phase-out of single-hull tankers and a phase-out scheme for the carriage of heavy grade fuel oil in single-hull tankers,²⁷

57. *Also welcomes* the adoption by the International Maritime Organization of the International Convention for the Control and Management of Ships' Ballast Water and Sediments,²⁸ and calls upon States to become parties to that Convention;

58. *Calls upon* all States that have not yet done so to become parties to the International Convention on the Control of Harmful Anti-fouling Systems on Ships,²⁹

59. *Welcomes* the adoption of the Protocol establishing an International Oil Pollution Compensation Supplementary Fund,³⁰ and calls upon States to become parties to that Protocol;

60. *Encourages* States, in accordance with the Convention and other relevant instruments, either bilaterally or regionally, to jointly develop and

²³ Maritime Safety Committee, document MSC//78/26/Add.1, annex 5, resolution MSC.155(78).

²⁴ Ibid., annex 3, resolution MSC.153(78).

²⁵ Ibid., annex 34, resolution MSC.167(78).

²⁶ IMO/LC.2/Circ.380.

²⁷ Marine Environment Protection Committee, document MEPC 50/3, annex 1, resolution MEPC.111(50).

²⁸ International Maritime Organization, document BWM/CONF/36, annex.

²⁹ International Maritime Organization, document AFS/CONF/26, annex.

³⁰ Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (LEG/Conf.14/20).

promote contingency plans for responding to pollution incidents, as well as other incidents that are likely to have significant adverse effects on the marine environment and biodiversity;

61. *Notes with interest* the decision taken at the fifty-second session of the Marine Environment Protection Committee of the International Maritime Organization to designate the Western European Waters as a particularly sensitive sea area,³¹

62. *Welcomes* the entry into force of the Stockholm Convention on Persistent Organic Pollutants,³² and calls upon all States that have not yet done so to become parties to that Convention;

63. *Calls upon* States to continue to prioritize action on marine pollution from land-based sources as part of their national sustainable development strategies and programmes, in an integrated and inclusive manner, and to advance the implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities³³ and the Montreal Declaration on the Protection of the Marine Environment from Land-based Activities,³⁴

64. *Welcomes* the adoption of resolution A.962(23) by the International Maritime Organization on 5 December 2003, entitled “International Maritime Organization Guidelines on Ship Recycling”, and calls upon States to follow these Guidelines in order to minimize marine pollution;

65. *Also welcomes* the continued work of States, the United Nations Environment Programme and regional organizations in the implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities, and encourages increased emphasis on the link between freshwater, the coastal zone and marine resources in the implementation of international development goals, including those contained in the United Nations Millennium Declaration³⁵ and of the time-bound targets in the Plan of Implementation of the World Summit on Sustainable Development (“Johannesburg Plan of Implementation”),³⁶ in particular the target on sanitation, and the Monterrey Consensus of the International Conference on Financing for Development;³⁷

66. *Calls upon* States to implement strategies and programmes for an integrated ecosystem-based approach to management, developed by the Conference of the Parties to the Convention on Biological Diversity, the Food and Agriculture Organization of the United Nations and other relevant global and regional organizations, and urges those organizations to cooperate in the development of practical guidance to assist States in this regard;

³¹Marine Environment Protection Committee, document MEPC 52/24, annex 10, resolution MEPC.121(52).

³² United Nations Treaty registration No. 40214. Available from www.pops.int.

³³ A/51/116, annex II.

³⁴ See A/57/57, annex I.B.

³⁵ See resolution 55/2.

³⁶ *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex.

³⁷ *Report of the International Conference on Financing for Development, Monterrey, Mexico, 18–22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex.

67. *Takes note* of part two of the addendum to the report of the Secretary-General on oceans and the law of the sea³⁸ describing the threats and risks to vulnerable and threatened marine ecosystems and biodiversity in areas beyond national jurisdiction, as well as details of conservation and management measures addressing these issues, prepared pursuant to the request contained in paragraph 52 of resolution 58/240;

68. *Reaffirms* the need for States and competent international organizations to urgently consider ways to integrate and improve, on a scientific basis and in accordance with the Convention and related agreements and instruments, the management of risks to the marine biodiversity of seamounts, cold water corals, hydrothermal vents and certain other underwater features;

69. *Welcomes* decision VII/5 on marine and coastal biological diversity adopted at the seventh meeting of the Conference of the Parties to the Convention on Biological Diversity;³⁹

70. *Calls upon* States and international organizations to urgently take action to address, in accordance with international law, destructive practices that have adverse impacts on marine biodiversity and ecosystems, including seamounts, hydrothermal vents and cold water corals;

71. *Welcomes* decision VII/28 adopted at the seventh meeting of the Conference of the Parties to the Convention on Biological Diversity in which the Conference decided to establish an ad hoc open-ended working group on protected areas,³⁹ and encourages the participation of oceans experts in the working group;

72. *Reaffirms* the need for States to continue their efforts to develop and facilitate the use of diverse approaches and tools for conserving and managing vulnerable marine ecosystems, including the possible establishment of marine protected areas, consistent with international law and based on the best scientific information available, and the development of representative networks of any such marine protected areas by 2012;

73. *Decides* to establish an Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction:

(a) To survey the past and present activities of the United Nations and other relevant international organizations with regard to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;

(b) To examine the scientific, technical, economic, legal, environmental, socio-economic and other aspects of these issues;

(c) To identify key issues and questions where more detailed background studies would facilitate consideration by States of these issues;

(d) To indicate, where appropriate, possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;

³⁸ A/59/62/Add.1.

³⁹ See UNEP/CBD/COP/7/21, annex.

74. *Requests* the Secretary-General to report on the issues referred to in paragraph 73 above in the context of his report on oceans and the law of the sea to the General Assembly at its sixtieth session, in order to assist the Ad Hoc Open-ended Informal Working Group in preparing its agenda, in consultation with all relevant international bodies; to convene the meeting of the Working Group in New York not later than six months after the release of the report; and to arrange support for the performance of its work to be provided by the Division for Ocean Affairs and the Law of the Sea;

75. *Encourages* States to include relevant experts in their delegations attending the meeting of the Working Group;

76. *Recognizes* the importance of making the outcomes of the Working Group widely available;

77. *Urges* States and relevant global and regional bodies to enhance their cooperation in the protection and preservation of mangroves, seagrass beds and coral reefs, including through the exchange of information;

78. *Reiterates its support* for the International Coral Reef Initiative, takes note of the tenth International Coral Reef Symposium, held in Okinawa, Japan, in 2004, supports the work under the Jakarta Mandate on Marine and Coastal Biological Diversity,⁴⁰ and the elaborated Programme of Work on Marine and Coastal Biological Diversity,⁴¹ and notes the progress that the International Coral Reef Initiative and other relevant bodies have made to incorporate cold water coral ecosystems into their programmes;

79. *Encourages* States to cooperate, directly or through competent international bodies, in exchanging information in the event of accidents involving foreign vessels on coral reefs and in promoting the development of economic assessment techniques for both restoration and non-use values of coral reef systems;

80. *Emphasizes* the need to mainstream sustainable coral reef management and integrated watershed management into national development strategies, as well as into the activities of relevant United Nations agencies and programmes, international financial institutions and the donor community;

XI

Marine science

81. *Calls upon* States, individually, or in collaboration with each other or with relevant international organizations and bodies, to improve understanding and knowledge of the deep sea, including, in particular, the extent and vulnerability of deep sea biodiversity and ecosystems, by increasing their marine scientific research activities in accordance with the Convention;

82. *Notes* the potential for gas hydrates as one source for energy development, as well as the possible associated risks, including those in the context of climate change, and encourages States and, if appropriate, the Authority and the international scientific community to continue to cooperate in deepening the understanding of the issues and in investigating the

⁴⁰ See A/51/312, annex II, decision II/10.

⁴¹ UNEP/CBD/COP/7/21, annex, decision VII/5, annex I.

feasibility, methodology, safety and environmental impacts of the extraction of gas hydrates from the seabed, their distribution and their use;

83. *Also notes* the potential for cobalt-rich ferromanganese crusts and polymetallic sulphides as important sources of minerals, and in this context encourages States, the Authority and the scientific community to cooperate to explore this potential and to minimize the environmental impacts of the exploration;

XII

Regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects

84. *Takes note* of the report on the International Workshop on the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects (“the regular process”),⁴² including its draft conclusions, convened to consider and review the draft document prepared by the group of experts;

85. *Recognizes* the urgent need to initiate a start-up phase, the “Assessment of Assessments”, as a preparatory stage towards the establishment of the regular process provided for in the Johannesburg Plan of Implementation³ and resolutions 57/141 and 58/240;

86. *Requests* the Secretary-General to convene the second International Workshop on the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects, from 13 to 15 June 2005 with representatives from States, relevant organizations, agencies and programmes of the United Nations system, other competent intergovernmental organizations and relevant non-governmental organizations, to continue considering issues relating to the establishment of the process, including the scope of the process and a task force to initiate the start-up phase, the “Assessment of Assessments”;

87. *Also requests* the Secretary-General to report on progress relating to establishment of the aforementioned regular process in his annual report to the General Assembly at its sixtieth session;

XIII

Regional cooperation

88. *Emphasizes once again* the importance of regional organizations and arrangements for cooperation and coordination in integrated oceans management, and, where there are separate regional structures for different aspects of oceans management, such as environmental protection and conservation of marine ecosystems, fisheries management, navigation, scientific research and maritime delimitation, calls for those different structures, where appropriate, to work together for optimal cooperation and coordination;

89. *Notes* that there have been a number of initiatives at the regional level, in various regions, to further the implementation of the Convention, takes note in this context of the Caribbean-focused Assistance Fund, which is intended to facilitate, mainly through technical assistance, the voluntary

⁴² A/59/126.

undertaking of maritime delimitation negotiations between Caribbean States, takes note once again of the Fund for Peace: Peaceful Settlement of Territorial Disputes, established by the General Assembly of the Organization of American States in 2000 as a primary mechanism, given its broader regional scope, for the prevention and resolution of pending territorial, land border and maritime boundary disputes, and calls upon States and others in a position to do so to contribute to these funds;

XIV

Open-ended informal consultative process on oceans and the law of the sea

90. *Requests* the Secretary-General to convene the sixth meeting of the Consultative Process in New York from 6 to 10 June 2005 and to provide it with the necessary facilities for the performance of its work and to arrange for support, as appropriate;

91. *Recalls* its decision to further review the effectiveness and utility of the Consultative Process at its sixtieth session;

92. *Recommends* that, in its deliberations on the report of the Secretary-General on oceans and the law of the sea at its meeting, the Consultative Process should organize its discussions around the following areas:

- (a) Fisheries and their contribution to sustainable development;
- (b) Marine debris;

as well as issues discussed at previous meetings;

XV

Inter-agency coordination and cooperation

93. *Notes* the establishment of the Oceans and Coastal Areas Network (UN-Oceans), a new inter-agency mechanism for coordination and cooperation on issues relating to oceans and coastal issues, called for in paragraph 69 of resolution 58/240;

94. *Urges* the close and continuous involvement in UN-Oceans of all relevant United Nations programmes, funds and the specialized agencies and other organizations of the United Nations system and the participation of international financial institutions, relevant intergovernmental and other organizations, as well as the Authority and the secretariats of multilateral environmental agreements;

95. *Requests* the Secretary-General to bring the present resolution to the attention of heads of intergovernmental organizations, the specialized agencies and funds and programmes of the United Nations engaged in activities relating to ocean affairs and the law of the sea, drawing their attention to paragraphs of particular relevance to them, and underlines the importance of their constructive and timely input for the report of the Secretary-General on oceans and the law of the sea and of their participation in relevant meetings and processes;

96. *Invites* the competent international organizations, as well as funding institutions, to take specific account of the present resolution in their programmes and activities and to contribute to the preparation of the comprehensive report of the Secretary-General on oceans and the law of the sea;

97. *Encourages* the sponsoring organizations of the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection to continue to support and provide the necessary assistance to the process of restructuring the Group of Experts;

XVI

Activities of the Division for Ocean Affairs and the Law of the Sea

98. *Expresses its appreciation* to the Secretary-General for the annual comprehensive report on oceans and the law of the sea and its addendum,⁵ prepared by the Division for Ocean Affairs and the Law of the Sea, as well as for the other activities of the Division, in accordance with the provisions of the Convention and the mandate set forth in resolutions 49/28, 52/26, 54/33, and 56/12 of 28 November 2001;

99. *Requests* the Secretary-General to continue to carry out the responsibilities entrusted to him in the Convention and related resolutions of the General Assembly, including resolutions 49/28 and 52/26, and to ensure that appropriate resources are made available to the Division for Ocean Affairs and the Law of the Sea for the performance of such responsibilities under the approved budget for the Organization;

100. *Invites* Member States and others in a position to do so to support the capacity-building activities of the Division for Ocean Affairs and the Law of the Sea, including, in particular, the training activities to assist developing States in the preparation of their submission to the Commission, and the TRAIN-SEA-COAST Programme of the Division;

XVII

Sixtieth session of the General Assembly

101. *Requests* the Secretary-General to report to the General Assembly at its sixtieth session on the implementation of the present resolution, including other developments and issues relating to ocean affairs and the law of the sea, in connection with his annual comprehensive report on oceans and the law of the sea, and to provide the report in accordance with the modalities set out in resolutions 49/28, 52/26 and 54/33, and also requests the Secretary-General to make the report available, in its current comprehensive format, at least six weeks in advance of the meeting of the Consultative Process;

102. *Notes* that the report referred to in paragraph 101 above will also be presented to States parties pursuant to article 319 of the Convention regarding issues of a general nature that have arisen with respect to the Convention;

103. *Decides* to include in the provisional agenda of its sixtieth session the item entitled "Oceans and the law of the sea".

*56th plenary meeting
17 November 2004*

2. General Assembly resolution 59/25 of 17 November 2004: Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments

The General Assembly,

Reaffirming its resolutions 46/215 of 20 December 1991, 49/116 and 49/118 of 19 December 1994, 50/25 of 5 December 1995 and 57/142 of 12 December 2002, as well as other resolutions on large-scale pelagic drift-net fishing, unauthorized fishing in zones of national jurisdiction and on the high seas, fisheries by-catch and discards, and other developments, its resolutions 56/13 of 28 November 2001 and 57/143 of 12 December 2002 on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (“the Agreement”),¹ and its resolution 58/14 of 24 November 2003,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea (“the Convention”),² and bearing in mind the relationship between the Convention and the Agreement,

Recognizing that, in accordance with the Convention, the Agreement sets forth provisions concerning the conservation and management of straddling fish stocks and highly migratory fish stocks, including provisions on subregional and regional cooperation in enforcement, binding dispute settlement and the rights and obligations of States in authorizing the use of vessels flying their flags for fishing on the high seas, and specific provisions to address the requirements of developing States in relation to the conservation and management of straddling fish stocks and highly migratory fish stocks and the development of fisheries for such stocks,

Noting that the Code of Conduct for Responsible Fisheries of the Food and Agriculture Organization of the United Nations (“the Code”)³ and its associated international plans of action set out principles and global standards of behaviour for responsible practices for the conservation of fisheries resources and the management and development of fisheries,

Noting with concern that effective management of marine capture fisheries has been made difficult in some areas by unreliable information and data caused by unreported and misreported fish catch and fishing effort and the contribution this lack of data makes to continued overfishing in some areas,

¹ *International Fisheries Instruments with Index* (United Nations publication, Sales No. E.98.V.11), sect. I; see also A/CONF.164/37.

² See *The Law of the Sea: Official Texts of the United Nations Convention on the Law of the Sea of 10 December 1982 and of 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 Index and Excerpts from the Final Act of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.97.V.10).

³ *International Fisheries Instruments with Index* (United Nations publication, Sales No. E.98.V.11), sect. III.

Noting with satisfaction the Strategy for Improving Information on Status and Trends of Capture Fisheries recently adopted by the Food and Agriculture Organization of the United Nations,⁴ and recognizing that the long-term improvement of the knowledge and understanding of fishery status and trends is a fundamental basis for fisheries policy and management for implementing the Code,

Recognizing the need to implement, as a matter of priority, the Plan of Implementation of the World Summit on Sustainable Development (“Johannesburg Plan of Implementation”),⁵ in relation to achieving sustainable fisheries,

Deploring the fact that fish stocks, including straddling fish stocks and highly migratory fish stocks, in many parts of the world are overfished or subject to sparsely regulated and heavy fishing efforts, mainly as a result of, inter alia, unauthorized fishing, inadequate regulatory measures, harmful fisheries subsidies and excess fishing capacity,

Concerned that illegal, unreported and unregulated fishing threatens seriously to deplete populations of certain fish species and to significantly damage marine ecosystems, to the detriment of sustainable fisheries as well as the food security and the economies of many States, particularly developing States,

Noting with satisfaction resolution 6/2003 of 9 December 2003, adopted by the Conference of the Food and Agriculture Organization of the United Nations, relating to preventing, deterring and eliminating illegal, unreported and unregulated fishing,⁶

Recognizing that the problem of overfishing continues to be exacerbated by inadequate flag State control over fishing vessels, including those fishing for straddling fish stocks and highly migratory fish stocks, and insufficient monitoring, control and surveillance measures,

Recognizing also that the interrelationship between ocean activities, such as shipping and fishing, and environmental issues needs further consideration,

Noting that the contribution of aquaculture to global fish supplies continues to increase its potential in developing countries to enhance local food security and poverty alleviation and meet future demands in fish consumption, bearing in mind article 9.1.4 of the Code,

Calling attention to the circumstances affecting fisheries in many developing States, in particular African States and small island developing States, and recognizing the urgent need for capacity-building to assist such States in meeting their obligations under international instruments and realizing the benefits from fisheries resources,

Noting the obligation of all States, pursuant to the provisions of the Convention, to cooperate in the conservation and management of straddling

⁴ Food and Agriculture Organization of the United Nations, *Report of the twenty-fifth session of the Committee on Fisheries, Rome, 24–28 February 2003*, appendix H.

⁵ *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex.

⁶ Food and Agriculture Organization of the United Nations, *Report of the Conference of the Food and Agriculture Organization of the United Nations, Thirty-second Session, Rome, 29 November–9 December 2003* (C 2003/REP).

fish stocks and highly migratory fish stocks, and recognizing the importance of coordination and cooperation at the global, regional, subregional as well as national levels in the areas, inter alia, of data collection, information-sharing, capacity-building and training for the conservation, management and sustainable development of marine living resources,

Recognizing the duty provided in the Convention, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (“the Compliance Agreement”),⁷ the Agreement and the Code for flag States to exercise effective control over fishing vessels flying their flag and vessels flying their flag which provide support to such vessels, and to ensure that the activities of such vessels do not undermine the effectiveness of conservation and management measures taken in accordance with international law and adopted at the national, subregional, regional or global levels,

Recognizing also the urgent need for action at all levels to ensure the long-term sustainable use and management of fisheries resources through the wide application of a precautionary approach and appropriate measures to reduce pollution and waste, and other factors, such as discards and catch by lost or abandoned gear, which adversely affect fish stocks,

Recognizing further the economic and cultural importance of sharks in many countries, the biological importance of sharks in the marine ecosystem, the vulnerability of some shark species to over-exploitation, the need for measures to promote the long-term sustainability of shark populations and fisheries and the relevance of the International Plan of Action for the Conservation and Management of Sharks, adopted by the Food and Agriculture Organization of the United Nations in 1999, in providing development guidance [guidance for the development] of such measures,

Reaffirming its support for the initiative of the Food and Agriculture Organization of the United Nations and relevant regional and subregional fisheries management organizations and arrangements on the conservation and management of sharks, while noting with concern that only a small number of countries have implemented the International Plan of Action for the Conservation and Management of Sharks,

Noting with satisfaction the outcomes of the third round of informal consultations of States parties to the Agreement, held in New York on 8 July 2004,

Taking note with appreciation of the report of the Secretary-General,⁸ including the section outlining current risks to the marine biodiversity of vulnerable marine ecosystems related to fishing activities, and conservation and management measures in place at the global, regional, subregional or national levels addressing these issues, in particular the useful role of the report in gathering and disseminating information on or relating to the sustainable development of the world’s marine living resources,

Expressing concern that the practice of large-scale pelagic drift-net fishing remains a threat to marine living resources, although the incidence of

⁷ *International Fisheries Instruments with Index* (United Nations publication, Sales No. E.98.V.11), sect. II.

⁸ A/59/298.

this practice has continued to be low in most regions of the world's oceans and seas,

Emphasizing that efforts should be made to ensure that the implementation of resolution 46/215 in some parts of the world does not result in the transfer to other parts of the world of drift nets that contravene the resolution,

Expressing concern, while recognizing considerable efforts to reduce by-catch in longline fishing through various regional fisheries management organizations, at the reports of continued loss of seabirds, particularly albatrosses, as a result of incidental mortality from longline fishing operations, and the loss of other marine species, including sharks, fin-fish species and marine turtles, as a result of incidental mortality,

Welcoming the fact that a growing number of States, and entities referred to in the Convention and in article 1, paragraph 2 (b), of the Agreement, as well as regional and subregional fisheries management organizations and arrangements, have taken measures, as appropriate, towards the implementation of the provisions of the Agreement,

Recognizing the significant contribution of sustainable fisheries to food security, income and wealth for present and future generations,

I

Achieving sustainable fisheries

1. *Reaffirms* the importance it attaches to the long-term conservation, management and sustainable use of the marine living resources of the world's oceans and seas and the obligations of States to cooperate to this end, in accordance with international law, as reflected in the relevant provisions of the Convention,² in particular the provisions on cooperation set out in Part V and Part VII, section 2, of the Convention, and where applicable, the Agreement;¹

2. *Calls upon* all States that have not done so, in order to achieve the goal of universal participation, to become parties to the Convention, which sets out the legal framework within which all activities in the oceans and seas must be carried out, taking into account the relationship between the Convention and the Agreement;

3. *Reaffirms* the importance of the Johannesburg Plan of Implementation in relation to fisheries, in particular the commitment made therein to restore depleted fish stocks on an urgent basis and, where possible, not later than 2015;²

4. *Urges* all States to apply the precautionary approach and the ecosystem approach widely to the conservation, management and exploitation of fish stocks, including straddling fish stocks and highly migratory fish stocks, and also calls upon States parties to the Agreement to implement fully the provisions of article 6 of the Agreement as a matter of priority;

² See *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex, para. 31 (a).

II

Implementation of the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

5. *Calls upon* all States, and entities referred to in the Convention and in article 1, paragraph 2 (b), of the Agreement, that have not done so to ratify or accede to the Agreement and in the interim to consider applying it provisionally;

6. *Emphasizes* the importance of the effective implementation of the provisions of the Agreement, including those provisions relating to bilateral, regional and subregional cooperation in enforcement, and urges continued efforts in this regard;

7. *Welcomes* the entry into force of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean on 19 June 2004, and encourages relevant States to become Parties to that Convention in accordance with its terms;

8. *Also welcomes* the inaugural meeting at Swakopmund, Namibia, from 9 to 13 March 2004 of the Commission of the South-East Atlantic Fisheries Organization as well as its continual operationalization and assumption of full competence for the conservation and management of resources that fall under its responsibility within the area of the Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean, and encourages signatory States and other States with real interest whose vessels fish in that Convention area for fishery resources covered by that Convention to become parties to the Convention and, in the interim, to consider applying it and the measures adopted thereunder provisionally, to ensure that vessels entitled to fly their flags apply such measures;

9. *Calls upon* all States to ensure that their vessels comply with the conservation and management measures that have been adopted by subregional and regional fisheries management organizations and arrangements in accordance with relevant provisions of the Convention and of the Agreement;

10. *Urges* States parties to the Agreement, in accordance with article 21, paragraph 4, thereof to inform, either directly or through the relevant regional or subregional fisheries management organization or arrangement, all States whose vessels fish on the high seas in the same region or subregion of the form of identification issued by those States parties to officials duly authorized to carry out boarding and inspection functions in accordance with articles 21 and 22 of the Agreement;

11. *Also urges* States parties to the Agreement, in accordance with article 21, paragraph 4, to designate an appropriate authority to receive notifications pursuant to article 21 and to give due publicity to such designation through the relevant subregional or regional fisheries management organization or arrangement;

12. *Invites* States and international financial institutions and organizations of the United Nations system to provide assistance according to Part VII of the Agreement, including, if appropriate, the development of

special financial mechanisms or instruments to assist developing States, in particular the least developed among them and small island developing States, to enable them to develop their national capacity to exploit fishery resources, including developing their domestically flagged fishing fleet, value-added processing and the expansion of their economic base in the fishing industry, consistent with the duty to ensure the proper conservation and management of those fisheries resources;

13. *Recalls* paragraph 10 of its resolution 58/14, in which it decided to establish an Assistance Fund under Part VII of the Agreement to assist developing States parties in the implementation of the Agreement, and encourages States, intergovernmental organizations, international financial institutions, national institutions, non-governmental organizations, as well as natural and juridical persons to make voluntary financial contributions to the Fund;

14. *Notes with satisfaction* the conclusion of an arrangement between the United Nations and the Food and Agriculture Organization of the United Nations regarding the administration of the Assistance Fund;

15. *Emphasizes* the importance of outreach to potential donor organizations to contribute to the programme of assistance, including the Assistance Fund;

16. *Requests* the Secretary-General to convene, pursuant to article 36 of the Agreement, a one-week review conference in the first part of 2006, with a view to assessing the effectiveness of the Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks, and to render the necessary assistance and provide such services as may be required for the review conference;

17. *Also requests* the Secretary-General to present to the conference a comprehensive report, prepared in cooperation with the Food and Agriculture Organization of the United Nations, in accordance with paragraph 2 of article 36 of the Agreement;

18. *Recalls* paragraph 6 of its resolution 56/13, and requests the Secretary-General to convene a fourth round of informal consultations of States parties to the Agreement, to consider, principally, but not exclusively, issues related to preparation for the review conference to be convened by the Secretary-General pursuant to article 36 of the Agreement, and to make any appropriate recommendation to the General Assembly;

19. *Requests* the Secretary-General to invite States, and entities referred to in the Convention and in article 1, paragraph 2 (b), of the Agreement, not party to the Agreement, as well as the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and other specialized agencies, the Commission on Sustainable Development, the World Bank, the Global Environment Facility and other relevant international financial institutions, subregional and regional fisheries management organizations and arrangements, other fisheries bodies, and relevant non-governmental organizations to attend the fourth round of informal consultations of States parties to the Agreement as observers;

III

Related fisheries instruments

20. *Emphasizes* the importance of the effective implementation of the provisions of the Compliance Agreement,⁷ and urges continued efforts in this regard;

21. *Calls upon* all States and other entities referred to in article X, paragraph 1, of the Compliance Agreement that have not yet become parties to that Agreement to do so as a matter of priority and, in the interim, to consider applying it provisionally;

22. *Urges* parties to the Compliance Agreement to exchange information in the implementation of that Agreement;

23. *Urges* States and subregional and regional fisheries management organizations and arrangements to implement and promote the application of the Code³ within their areas of competence;

24. *Urges* States, as a matter of priority, to support implementation of the Strategy for Improving Information on Status and Trends of Capture Fisheries⁴ at the national and regional levels, giving particular emphasis to capacity-building in developing countries;

25. *Also urges* States to develop and implement, as a matter of priority, national and, as appropriate, regional plans of action to put into effect the international plans of action of the Food and Agriculture Organization of the United Nations;

IV

Illegal, unreported and unregulated fishing

26. *Emphasizes once again its serious concern* that illegal, unreported and unregulated fishing remains one of the greatest threats to marine ecosystems and continues to have serious and major implications for the conservation and management of ocean resources, and renews its call upon States to comply fully with all existing obligations and to combat such fishing and urgently to take all necessary steps to implement the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the Food and Agriculture Organization of the United Nations;

27. *Calls upon* States not to permit vessels flying their flag to engage in fishing on the high seas or in areas under the national jurisdiction of other States, unless duly authorized by the authorities of the States concerned and in accordance with the conditions set out in the authorization, without having effective control over their activities, and to take specific measures, including deterring the reflagging of vessels by their nationals, in accordance with the relevant provisions of the Convention, the Agreement and the Compliance Agreement, to control fishing operations by vessels flying their flag;

28. *Affirms* the need to strengthen, where necessary, the international legal framework for intergovernmental cooperation, in particular at the regional and subregional levels, in the management of fish stocks and in combating illegal, unreported and unregulated fishing, in a manner consistent with international law, and for States and entities referred to in the Convention and in article 1, paragraph 2 (b), of the Agreement to collaborate in efforts to address these types of fishing activities, including, inter alia, the development

and implementation of vessel monitoring systems and the listing of vessels in order to prevent illegal, unreported, and unregulated fishing activities and, where appropriate and consistent with international law, trade monitoring schemes, including to collect global catch data, through subregional and regional fisheries management organizations and arrangements;

29. *Encourages* States to consider becoming members of the International Monitoring, Control and Surveillance Network for Fisheries-Related Activities, a voluntary network of monitoring, control and surveillance professionals designed to facilitate exchange of information and to support countries in discharging their obligations pursuant to international agreements, in particular the Compliance Agreement;

30. *Requests* the Secretary-General to report to the General Assembly at its sixty-first session on the study undertaken by the International Maritime Organization, in cooperation with other competent international organizations, following the invitation extended to it in resolution 58/14 and resolution 58/240 of 23 December 2003, to examine and clarify the role of the “genuine link” in relation to the duty of flag States to exercise effective control over ships flying their flag, including fishing vessels, and the potential consequences of non-compliance with the duties and obligations of flag States prescribed in the relevant international instruments;

31. *Calls upon* flag and port States to take all measures consistent with international law necessary to prevent the operation of sub-standard vessels and illegal, unreported and unregulated fishing activities;

32. *Encourages* the Food and Agriculture Organization of the United Nations and subregional and regional fisheries management organizations and arrangements to develop further ideas to devise means of discouraging owners and operators from non-compliance with the requirements imposed by flag States in carrying out their duties and obligations under relevant international instruments;

33. *Recognizes* the commitment made in the Johannesburg Plan of Implementation for States urgently to develop and implement national and, where appropriate, regional plans of action, to put into effect by 2004 the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, and to establish effective monitoring, reporting, enforcement and control of fishing vessels, including by flag States, to further the International Plan of Action, and calls upon States to adhere to this commitment as a matter of priority;

34. *Also recognizes* that common means of conducting illegal, unreported and unregulated fishing involves the unreported or misreported transshipments of fish at sea, and urges States, either directly or through relevant subregional and regional fisheries management organizations and arrangements, to establish comprehensive systems, where appropriate, for monitoring and control of transshipments on the high seas;

35. *Urges* relevant regional and subregional fisheries management organizations and arrangements to implement effective measures against illegal, unreported and unregulated fishing, inter alia, by compiling a record of vessels authorized to fish in their area of competence, in accordance with the Code;

36. *Commends* the Food and Agriculture Organization of the United Nations for its activities in combating illegal, unreported and unregulated

fishing, including its initiative to organize the intergovernmental technical consultation on the role of the port State in combating illegal, unreported and unregulated fishing, held from 31 August to 2 September 2004, and welcomes the outcome of the consultation;

37. *Urges* States to eliminate subsidies that contribute to illegal, unreported and unregulated fishing, while completing the efforts undertaken at the World Trade Organization to clarify and improve its disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries;

38. *Recognizes* the need for enhanced port State controls to combat illegal, unreported and unregulated fishing, urges States to cooperate, in particular at the regional level, and through regional and subregional fisheries management organizations and arrangements, as well as through participation, where appropriate, in the efforts of the Food and Agriculture Organization of the United Nations in cooperation with the International Maritime Organization to address substantive issues relating to the role of the port State, noting that such efforts include the elaboration of a draft model scheme on port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing;

V

Fishing overcapacity

39. *Calls upon* States and relevant regional and subregional fisheries management organizations and arrangements, as a matter of priority, to take effective measures to improve the management of fishing capacity and to put into effect by 2005 the International Plan of Action for the Management of Fishing Capacity, taking into account the need, through these actions, to avoid the transfer of fishing capacity to other fisheries or areas including, but not limited to, those areas where fish stocks are overexploited or in a depleted condition;

40. *Urges* States to eliminate subsidies that contribute to fishing overcapacity, while completing the efforts undertaken at the World Trade Organization to clarify and improve its disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries;

41. *Notes with satisfaction* that information about more than 5,500 fishing vessels authorized to fish on the high seas has been provided to the Food and Agriculture Organization of the United Nations by at least seventeen flag States and entered on the High Seas Vessels Authorization Record established by the organization in accordance with article VI of the Compliance Agreement, and urges those States and other entities referred to in article X, paragraph 1, of the Compliance Agreement that have become parties to it to establish a record of fishing vessels authorized to fish on the high seas and, pursuant to articles IV and VI thereof, to make such a record available to the Organization as a matter of priority, and promptly to notify the Organization of any modifications to such a record;

42. *Calls upon* all States to assist this work of the Food and Agriculture Organization of the United Nations, and to take measures to halt the increase of large-scale fishing vessels in accordance with the International Plan of Action for the Management of Fishing Capacity;

43. *Welcomes* the significant outcomes of the Technical Consultation to Review Progress and Promote the Full Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the International Plan of Action for the Management of Fishing Capacity of the Food and Agriculture Organization of the United Nations, held from 24 to 29 June 2004, which recommended specific actions to the Committee on Fisheries of the Food and Agriculture Organization of the United Nations and other relevant regional and subregional fisheries management organizations and arrangements with regard to illegal, unreported and unregulated fishing and fishing overcapacity, and also suggested measures to be taken by States and fishing entities regarding expanding fishing capacity by certain fishing operations in the Central and Western Pacific Ocean;

VI

Large-scale pelagic drift-net fishing

44. *Reaffirms* the importance it attaches to continued compliance with its resolution 46/215 and other subsequent resolutions on large-scale pelagic drift-net fishing, and urges States and entities referred to in the Convention and in article 1, paragraph 2 (b), of the Agreement to enforce fully the measures recommended in those resolutions;

VII

Fisheries by-catch and discards

45. *Urges* States, relevant international organizations and regional and subregional fisheries management organizations and arrangements that have not done so to take action to reduce or eliminate by-catch, catch by lost or abandoned gear, fish discards and post-harvest losses, including juvenile fish, consistent with international law and relevant international instruments, including the Code, and in particular to consider measures including, as appropriate, technical measures related to fish size, mesh size or gear, discards, closed seasons and areas and zones reserved for selected fisheries, particularly artisanal fisheries, the establishment of mechanisms for communicating information on areas of high concentration of juvenile fish, taking into account the importance of ensuring confidentiality of such information, and support for studies and research that will reduce or eliminate by-catch of juvenile fish;

46. *Encourages* States and entities referred to in the Convention and in article 1, paragraph 2 (b), of the Agreement to give due consideration to participation, as appropriate, in regional and subregional organizations with mandates to conserve non-target species taken incidentally in fishing operations, and notes in particular the Inter-American Convention for the Protection and Conservation of Sea Turtles and Their Habitats, regional sea turtle conservation instruments in the West African, the wider Caribbean, and the Indian Ocean/ South-East Asia regions, the work of the Southeast Asian Fisheries Development Centre on turtle conservation and management, the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas,¹⁰ and the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area in this regard;

¹⁰ United Nations, *Treaty Series*, vol. 1772, No. 30865.

47. *Notes with satisfaction* the entry into force on 1 February 2004 of the Agreement on the Conservation of Albatrosses and Petrels under the Convention on the Conservation of Migratory Species of Wild Animals, and encourages relevant States which have not already done so to become parties to that Agreement in accordance with its terms;

48. *Also notes with satisfaction* the activities of the Food and Agriculture Organization of the United Nations, in cooperation with relevant United Nations agencies and programmes, in particular the United Nations Environment Programme and the Global Environment Facility, aimed at promoting the reduction of by-catch and discards in fisheries activities;

49. *Notes* the Technical Consultation on Sea Turtles Conservation and Fisheries to be organized by the Food and Agriculture Organization of the United Nations from 29 November to 2 December 2004, and encourages States to participate actively in this work;

VIII

Subregional and regional cooperation

50. *Urges* coastal States and States fishing on the high seas, in accordance with the Convention and the Agreement, to pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, to ensure the effective conservation and management of such stocks;

51. *Encourages* States fishing for straddling fish stocks and highly migratory fish stocks on the high seas, and relevant coastal States, where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for such stocks, to give effect to their duty to cooperate by becoming members of such an organization or participants in such an arrangement, or by agreeing to apply the conservation and management measures established by such an organization or arrangement;

52. *Invites*, in this regard, subregional and regional fisheries management organizations and arrangements to ensure that all States having a real interest in the fisheries concerned may become members of such organizations or participants in such arrangements, in accordance with the Convention and the Agreement;

53. *Encourages* relevant coastal States and States fishing on the high seas for a straddling fish stock or a highly migratory fish stock, where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for such stock, to cooperate to establish such an organization or enter into another appropriate arrangement to ensure the conservation and management of such stocks, and to participate in the work of the organization or arrangement;

54. *Welcomes* the initiation of negotiations and ongoing preparatory work to establish regional and subregional fisheries management organizations or arrangements in several fisheries, and urges participants in those negotiations to apply provisions of the Convention and the Agreement to their work;

55. *Notes with satisfaction*, in this regard, the recent recommendation of the Western Central Atlantic Fisheries Commission that established an

intersessional working group tasked to study the feasibility of strengthening regional fisheries management in that region, encourages relevant States and organizations to work actively to fulfil the recommendation, and notes the important contribution of the Caribbean Regional Fisheries Mechanism to this process;

56. *Encourages* States to develop ocean policies and mechanisms on integrated management, including at the subregional and regional levels, and also including assistance to developing States in accomplishing these objectives, as well as by promoting improved cooperation between regional fisheries management organizations and other regional entities, such as the United Nations Environment Programme regional seas programmes and conventions;

57. *Encourages* subregional or regional fisheries management organizations or arrangements and States and entities referred to in the Convention and in article 1, paragraph 2 (b), of the Agreement that are members of or participate in such organizations or arrangements, to consider adopting, where appropriate and in accordance with international law, conservation and management measures for fish stocks that fall within the competence of such organizations and/or arrangements but are not yet managed by them, in particular for those stocks that have vulnerable life histories, that scientific data indicate are in decline and/or are subject to an international plan of action of the Food and Agriculture Organization of the United Nations;

IX

Responsible fisheries in the marine ecosystem

58. *Encourages* States to apply by 2010 the ecosystem approach, notes the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem¹¹ and decision VII/11¹² and other relevant decisions of the Conference of the Parties to the Convention on Biological Diversity, notes the work of the Food and Agriculture Organization of the United Nations related to guidelines for the implementation of the ecosystem approach to fisheries management, and also notes the importance to this approach of relevant provisions of the Agreement and the Code;

59. *Also encourages* States to increase scientific research in accordance with international law on the marine ecosystem;

60. *Calls upon* States, the Food and Agriculture Organization of the United Nations, the International Maritime Organization, the United Nations Environment Programme, in particular its Regional Seas programme, regional and subregional fisheries management organizations and arrangements and other appropriate intergovernmental organizations that have not yet done so to take action to address the issue of lost or abandoned fishing gear and related marine debris, including through the collection of data on gear loss, economic costs to fisheries and other sectors, and the impact on marine ecosystems;

61. *Requests* the Secretary-General, in his next report concerning fisheries, to include information on the actions taken by the Food and Agriculture Organization of the United Nations, the United Nations

¹¹ E/CN.17/2002/PC.2/3, annex.

¹² See UNEP/CBD/COP/7/21, annex.

Environment Programme, in particular its Regional Seas programme, the International Maritime Organization, regional and subregional fisheries management organizations and arrangements, and other appropriate intergovernmental organizations, to give effect to paragraph 60 above;

62. *Urges* States to ratify and implement relevant international agreements, including annex V to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto;

63. *Calls upon* States, where relevant, to establish systems for retrieving lost gear and nets;

64. *Notes* that 2005 will mark the ten-year anniversary of the adoption of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities,¹³ and urges all States to implement the Global Programme of Action and to accelerate activity to safeguard the marine ecosystem, including fish stocks, against pollution and physical degradation;

65. *Calls upon* States, the Food and Agriculture Organization of the United Nations and other specialized agencies of the United Nations, subregional and regional fisheries management organizations and arrangements, where appropriate, and other appropriate intergovernmental bodies, to cooperate in achieving sustainable aquaculture, including through information exchange, developing equivalent standards on such issues as aquatic animal health and human health and safety concerns, assessing the potential positive and negative impacts of aquaculture, including socio-economics, on the marine and coastal environment, including biodiversity, and adopting relevant methods and techniques to minimize and mitigate adverse effects;

66. *Calls upon* States, either by themselves or through regional fisheries management organizations or arrangements, where these are competent to do so, to take action urgently, and consider on a case-by-case basis and on a scientific basis, including the application of the precautionary approach, the interim prohibition of destructive fishing practices, including bottom trawling that has adverse impacts on vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals located beyond national jurisdiction, until such time as appropriate conservation and management measures have been adopted in accordance with international law;

67. *Calls upon* regional fisheries management organizations or arrangements with the competence to regulate bottom fisheries urgently to adopt, in their regulatory areas, appropriate conservation and management measures, in accordance with international law, to address the impact of destructive fishing practices, including bottom trawling that has adverse impacts on vulnerable marine ecosystems, and to ensure compliance with such measures;

68. *Calls upon* members of regional fisheries management organizations or arrangements without the competence to regulate bottom fisheries and the impacts of fishing on vulnerable marine ecosystems to

¹³ A/51/116, annex II.

expand the competence, where appropriate, of their organizations or arrangements in this regard;

69. *Calls upon* States urgently to cooperate in the establishment of new regional fisheries management organizations or arrangements, where necessary and appropriate, with the competence to regulate bottom fisheries and the impacts of fishing on vulnerable marine ecosystems in areas where no such relevant organization or arrangement exists;

70. *Requests* the Secretary-General, in cooperation with the Food and Agriculture Organization of the United Nations, to include in his next report concerning fisheries a section on the actions taken by States and regional fisheries management organizations and arrangements to give effect to paragraphs 66 to 69 above, in order to facilitate discussion of the matters covered in those paragraphs;

71. *Agrees* to review within two years progress on action taken in response to the requests made in paragraphs 66 to 69 above, with a view to further recommendations, where necessary, in areas where arrangements are inadequate;

72. *Calls upon* States, the Food and Agriculture Organization of the United Nations and subregional or regional fisheries management organizations and arrangements to implement fully the International Plan of Action for the Conservation and Management of Sharks as a matter of priority, inter alia, by conducting assessments of shark stocks and developing and implementing national plans of action, recognizing the need of some States, in particular developing States, for assistance in this regard;

73. *Urges* States, including those working through subregional or regional fisheries management organizations and arrangements in implementing the International Plan of Action for the Conservation and Management of Sharks, to collect scientific data regarding shark catches and to consider adopting conservation and management measures, particularly where shark catches from directed and non-directed fisheries have a significant impact on vulnerable or threatened shark stocks, in order to ensure the conservation and management of sharks and their long-term sustainable use, including by banning directed shark fisheries conducted solely for the purpose of harvesting shark fins and by taking measures for other fisheries to minimize waste and discards from shark catches, and to encourage the full use of dead sharks;

74. *Requests* the Food and Agriculture Organization of the United Nations to develop programmes to assist States, including developing States, in carrying out the tasks mentioned in paragraph 73 above, in particular the adoption of appropriate conservation and management measures, including the banning of directed shark fisheries conducted solely for the purpose of harvesting shark fins;

75. *Reaffirms* the requests contained in paragraph 50 of its resolution 58/14, and invites the Food and Agriculture Organization of the United Nations to report to the Secretary-General, for inclusion in his report on sustainable fisheries, on progress regarding the preparation of the study mentioned therein, as well as the programmes mentioned in paragraph 74 above, and to consider at the sixty-second session of the General Assembly whether additional action is required;

X

Capacity-building

76. *Reiterates* the crucial importance of cooperation by States directly or, as appropriate, through the relevant regional and subregional organizations, and by other international organizations, including the Food and Agriculture Organization of the United Nations through its FishCODE programme, including through financial and/or technical assistance, in accordance with the Agreement, the Compliance Agreement, the Code and the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the International Plan of Action for the Conservation and Management of Sharks, to increase the capacity of developing States to achieve the goals and implement the actions called for in the present resolution;

77. *Invites* States and relevant intergovernmental organizations to develop projects, programmes and partnerships with relevant stakeholders and mobilize resources for the effective implementation of the outcome of the African Process for the Protection and Development of the Marine and Coastal Environment, and to consider the inclusion of fisheries components in this work;

78. *Also invites* States and relevant intergovernmental organizations to further implement sustainable fisheries management and improve financial returns from fisheries by supporting and strengthening relevant regional fisheries management organizations, as appropriate, such as the Caribbean Regional Fisheries Mechanism and such agreements as the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific;

XI

Cooperation within the United Nations system

79. *Requests* the relevant parts of the United Nations system, international financial institutions and donor agencies to support increased enforcement and compliance capabilities for regional fisheries management organizations and their member States;

80. *Invites* the Food and Agriculture Organization of the United Nations to continue its cooperative arrangements with United Nations agencies on the implementation of the international plans of action and to report to the Secretary-General, for inclusion in his annual report on sustainable fisheries, on priorities for cooperation and coordination in this work;

81. *Invites* the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the Secretariat, the Food and Agriculture Organization of the United Nations and other relevant bodies of the United Nations system to consult and cooperate in the preparation of questionnaires designed to collect information on sustainable fisheries, in order to avoid duplication;

XII

Sixtieth session of the General Assembly

82. *Requests* the Secretary-General to bring the present resolution to the attention of all members of the international community, relevant

intergovernmental organizations, the organizations and bodies of the United Nations system, regional and subregional fisheries management organizations and relevant non-governmental organizations, and to invite them to provide the Secretary-General with information relevant to the implementation of the present resolution;

83. *Also requests* the Secretary-General to submit to the General Assembly at its sixtieth session a report on “Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments”, taking into account information provided by States, relevant specialized agencies, in particular the Food and Agriculture Organization of the United Nations, and other appropriate organs, organizations and programmes of the United Nations system, regional and subregional organizations and arrangements for the conservation and management of straddling fish stocks and highly migratory fish stocks, as well as other relevant intergovernmental bodies and non-governmental organizations, and consisting, inter alia, of elements provided in relevant paragraphs in the present resolution;

84. *Decides* to include in the provisional agenda of its sixtieth session, under the item entitled “Oceans and the law of the sea”, the sub-item entitled “Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments”.

*56th plenary meeting
17 November 2004*

B. National Legislation

1. Madagascar
Maritime Code
(2 April 2004)¹

Part II
Maritime commerce

BOOK 8.
CLAIMS ON VESSELS

Title A
Maritime sureties

Chapter 1
Preferential claims on vessels

8.1.01. Preferential claims

Claims lodged in the following cases shall be preferential claims on a vessel, on the freight for the voyage during which the preferential claim arises, and on accessory proceeds in respect of the vessel and the freight acquired since the beginning of the voyage:

1. Legal costs incurred in connection with the sale of the vessel and apportionment of the proceeds;
2. Tonnage and port dues and other official charges and taxes of the same kinds, pilotage fees, and surveillance and preservation costs since the vessel's arrival in the latest port;
3. Claims resulting from the articles of agreement of the master, crew or other persons employed on board;
4. Salvage and assistance awards and the vessel's contribution to general average;
5. Compensation in respect of collisions or other accidents of navigation or for damage caused to the installations of ports or waterways, and compensation for bodily injuries to passengers or crew and for loss or damage of cargo or baggage;
6. Claims arising from contracts concluded or operations carried out by a master away from the home port, pursuant to his legal powers, in connection with actual requirements of the preservation of the vessel or the continuation of the voyage, regardless of whether the master is at the same time the vessel's owner or whether the claim has been entered by him or by suppliers, repairers, lenders or other contractors.

8.1.02. Claims of the first rank

The preferential claims listed in article 8.1.01 are claims of the first rank. They shall take preference over all mortgages.

8.1.03. Claims of the second rank

Claimants may also invoke preferences under general law, but claims acquiring preference in this way shall be ranked second, after mortgages.

¹ Original: French. Text communicated by the Permanent Mission of Madagascar through note verbale No. 02-409/DELONU/5B/Dt de la Mer, dated 9 December 2002. Part I of the Maritime Code was published in *Law of the Sea Bulletin* No. 56.

8.1.04. Accessory proceeds

The following items constitute accessory proceeds for the purposes of article 8.1.01:

1. Compensation due to the owner in respect of material damage caused to the vessel and not repaired, or for loss of freight;
 2. Compensation due to the owner in respect of general average in so far as such general average constitutes either material damage caused to the vessel and not repaired or loss of freight;
 3. Remuneration due to the owner in respect of salvage assistance rendered up to the end of the voyage, after deduction of the sums assigned to the master and other persons employed on the vessel.
- Passenger fares and the all-inclusive lump sum representing freight provided for in connection with limitation of a vessel's liability shall be treated as freight.

8.1.05. Compensation under insurance contracts and State grants

Compensation due to an owner under insurance contracts or awards, grants and other subsidies provided by the State or by public authorities shall be treated as accessory proceeds in respect of the vessel or the freight.

8.1.06. Claims arising from articles of agreement

By derogation of article 8.1.01, the preference established in the interest of persons employed on a vessel shall apply to all the freight due for all the voyages made under the same articles of agreement.

8.1.07. Classification by voyage

Preferential claims pertaining to each voyage shall take precedence over those pertaining to the preceding voyage.

However, claims arising from a single contract covering several voyages shall all have the same ranking as claims pertaining to the last of these voyages.

8.1.08. Classification within a single voyage

Claims pertaining to one and the same voyage shall be preferred in the order in which they are listed in article 8.1.01. In the event of insufficient funds, the claims mentioned in each numbered paragraph shall have the same ranking and shall be paid pro rata.

However, the claims mentioned in article 8.1.01, paragraphs 4 and 6, shall be paid in each of those categories preferentially in reverse order of the dates on which they arose. Claims pertaining to one and the same event shall be deemed to have arisen at the same time.

8.1.09. Limitation of owners' liability

Preferential creditors shall be able to seek the full amount of their claims without application of the rules on limitation of owners' liability. However, the amount accruing to them shall not exceed the amount due under those rules.

8.1.10. Right to trace

The preferential claims in article 8.1.01 shall follow the vessel regardless of the ownership into which it may pass.

8.1.11. Statute of limitations

Preferential claims shall lapse on the expiry of a time limit of one year for all claims other than the claims of suppliers mentioned in article 8.1.01, paragraph 6; in the case of these latter claims the time limit shall be six months.

These time limits shall run:

1. For preferential claims securing assistance and salvage awards, from the day on which the operations ended;

2. For preferential claims securing compensation for damage and other accidents and for bodily injury, from the day on which the damage or injury was caused;

3. For preferential claims securing claims for losses or damage of cargo or baggage, from the day on which the cargo or baggage was delivered or the day on which it should have been delivered;

4. For preferential claims securing claims in respect of repairs or supplies or the other claims referred to in article 8.1.01, paragraph 6, from the day on which the claim arose;

5. In all other cases, from the time when the claim becomes payable.

The claims of masters, crew members and other persons employed on a vessel shall not be rendered payable within the meaning of the preceding paragraph by a request for an advance or payment on account.

8.1.12. Extinction of preferential claims

Preferential claims shall be extinguished, regardless of the general modes of extinction of obligations:

1. By an order for seizure of the vessel for violation of customs, police or security regulations;

2. By the sale of the vessel under a court order issued in accordance with the provisions of chapter 6 of this Book;

3. In the event of sale or any other voluntary transfer of ownership, two months after the announcement of the sale in accordance with the provisions of article 2.8.03.

8.1.13. Exercise of preferential claims

A preferential claim on freight may be exercised provided that the freight is still due or the total amount of the freight is in the hands of the master or the owner's agent. The same shall apply to preferential claims on accessory proceeds acquired in respect of the vessel or the freight.

8.1.14. Scope of preferential claims

The provisions of articles 8.1.01 to 8.1.13 shall apply to vessels operated either by their owner or by an operator who is not their owner or by a principal charterer, except when an owner has been deprived of ownership by an unlawful act or when a creditor does not act in good faith.

Chapter 2

Maritime Mortgages

8.2.01. Scope

Maritime mortgages may be taken out on vessels having a gross registered tonnage in excess of 10 tons.

8.2.02. Constitution of mortgages

Mortgages must be constituted in the form of a contract. They may be constituted either by an authentic instrument or by a private instrument but they must be drawn up in writing, under pain of nullification.

8.2.03. Qualifying persons

A mortgage may be taken out only by a vessel's owner or by his agent holding a special mandate.

When a vessel is jointly owned, the operator-guarantor may mortgage the vessel for the purposes of fitting out or navigation with the authorization of the joint owners representing two thirds of the shares.

8.2.04. Mortgage of vessels under construction

A mortgage may be taken out on a vessel under construction.

In this case it shall be preceded by a declaration to the maritime administrative authority containing the particulars prescribed by decree.

8.2.05. Mortgage basis

A mortgage taken out on a vessel shall extend to its hull and to all its attachments, machinery, gear and tackle.

It shall not extend to freight.

8.2.06. Subrogation in the event of loss or damage of vessels

If a vessel is lost or damaged, the following items may be subrogated to a vessel and any accessory proceeds acquired:

- (a) Compensation due to the owner in respect of material damage suffered by the vessel;
- (b) Sums due to the owner in respect of contribution to general average suffered by the vessel;
- (c) Compensation due to the owner in respect of assistance or salvage since the registration of the mortgage, to the extent that such compensation represents loss or damage of the mortgaged vessel;
- (d) Compensation under insurance on the vessel's hull.

8.2.07. Entry in the register of maritime mortgages

A mortgage shall be made public by entry in the register of maritime mortgages kept by the Merchant Marine Administration in Antananarivo.

The modalities for maintaining this register, the form and content of entries, the provisions on deletion and on the publication of entries not governed by this Code, as well as the tariffs of the fees to be charged by the Administration for these various formalities, shall be established by decree.

8.2.08. Mortgages taken out in foreign countries

A mortgage taken out in a foreign country on a Malagasy vessel shall not take effect with respect to third parties until the day of its entry in the register of maritime mortgages referred to in article 8.2.07.

8.2.09. Mortgages on foreign vessels

A mortgage or other contractual lien contracted before the vessel's registration on a vessel purchased or under construction abroad shall be valid and shall take effect with respect to third parties in accordance with the provisions established by decree.

8.2.10. Transfer of mortgage rights

If the instrument constituting a mortgage is an order instrument, its negotiation by endorsement shall entail the transfer of the mortgage right.

8.2.11. Expiry and renewal of registrations

Registration shall be renewed within a time limit of 10 years, under pain of expiry.

A registration shall be renewed in the same form as the original registration.

8.2.12. Deletion of mortgages

Entries shall be deleted either with the consent of the parties concerned having the capacity to give such consent, or by virtue of a judgement without right of appeal or which has become *res judicata*, or on the expiry of the time limit specified in article 8.2.11.

8.2.13. Order of ranking

When there two or more mortgages on the same vessel, they shall be ranked in the order of their dates of registration.

Mortgages registered on the same day shall have the same ranking, regardless of any difference in the hour of their registration.

8.2.14. Right to trace

Creditors holding mortgages on a vessel or part of a vessel shall have the right to trace the vessel, regardless of the ownership into which it passes, and to be ranked and paid in the order of the registration of the mortgages in question.

In all cases of joint ownership, mortgages taken out during undivided ownership by one or more duly authorized joint owners shall persist after division or sale by auction.

However, if the sale by auction is a consequence of an order to sell issued by a court in a manner specified in this Code, the preferential claims of creditors shall be transferred to the proceeds of the sale.

8.2.15. Redemption of mortgages

When a person purchasing a vessel wishes to protect himself against proceedings under article 8.2.17, he shall so inform the Merchant Marine Administration three months before payment of the price and declare that he is willing to redeem the mortgage debts immediately up to a limit of the vessel's price, making no distinction between payable and non-payable debts.

The Merchant Marine Administration shall notify all the mortgage holders. It shall also submit to the purchaser a table with three columns, the first showing the dates of registration, the second the names of the mortgage holders, and the third the amounts of the mortgages registered.

8.2.16. Legal proceedings

Any creditor may demand that a vessel be put up for auction by offering to pay one tenth over and above the price and providing a surety for the payment of the price and the charges.

Such a demand, signed by the creditor, shall be made known to the purchaser within 10 days of the notifications. It shall contain a summons to the civil court in the place where the vessel is located or, if the vessel is at sea, in its home port to ensure that an order is made for the auction to proceed.

8.2.17. Sale by auction

A sale by auction shall take place as arranged either by the creditor who has demanded it or by the purchaser, in the manner established in this Code for sales by court order.

8.2.18. Sale to a foreign national or company

A Malagasy vessel encumbered by a mortgage may not be voluntarily sold, exchanged or converted into capital for the benefit of a foreign national or a foreign company, regardless of the place of the transaction or the nationality of the mortgage holder or holders. The same prohibition shall apply to the voluntary assignment in the interest of a foreigner of more than one half of the joint ownership of a Malagasy vessel encumbered by a mortgage.

Any transaction carried out in fraudulent circumvention of this prohibition shall render the perpetrator liable to punishment for abuse of trust. The perpetrator and his accomplices may be prosecuted and tried by the Malagasy courts, regardless of the place where the offence is committed.

8.2.19. Mortgage registration, deletion and certification fees

The tariffs of the fees to be charged by the Administration for legal formalities relating to maritime mortgages shall be established by decree.

8.2.20. Modalities of application

The modalities of the application of the provisions of this chapter shall be established by decree.

Chapter 3
Fund Providing Limitation of Owners' Liability

8.3.01. Principles of limitation of liability

A vessel's owner shall be liable for damage caused by the vessel or by the negligence of its master or other persons employed at sea or on shore in the exercise of the functions assigned to them.

In all cases the owner may free himself from the foregoing obligations by setting up a limitation fund, except when it is proved that the damage resulted from an act or omission of the owner himself, committed with the intention of causing the damage in question or committed recklessly and in the knowledge that the damage would probably result.

8.3.02. Claims subject to limitation

Claims against a vessel's owner shall be subject to limitation when they fall into one of the following categories:

1. Claims in respect of death or bodily injury or of loss or damage of any goods occurring on board the vessel or in direct relation to its operation or to assistance or salvage operations, as well as any other harm that may result therefrom;
2. Claims in respect of any other harm resulting from a delay in the transport by sea of cargo, passengers or their baggage;
3. Claims in respect of other harm resulting from infringement of any extra-contractual right and directly connected with the vessel's operation or with assistance or salvage operations;
4. Claims in respect of refloating, raising or destroying a sunken, wrecked, grounded or abandoned vessel or rendering it harmless, and in respect of everything which is or was on board;
5. Claims in respect of raising or destroying a vessel's cargo or rendering it harmless;
6. Claims lodged by a person other than the person responsible for the measures taken to prevent or reduce damage in respect of which the person bearing liability may limit his liability, and claims in respect of subsequent damage caused by such measures.

However, claims lodged under paragraphs 4, 5 and 6 above shall not be subject to limitation of liability when they relate to remuneration under a contract concluded with the person bearing liability.

8.3.03. Claims excluded from limitation

An owner may not contest his liability in the case of:

- Claims of the State or local authorities in respect of the actions mentioned in article 8.3.02, paragraph 4;
- Claims in respect of damage resulting from pollution by hydrocarbons;
- Claims subject to limitation of liability for nuclear damage;
- Claims arising from nuclear damage against the owner or operator of a nuclear vessel.

8.3.04. Indivisibility of incidents

The limitation of liability defined in article 8.3.05 shall apply to all claims in respect of bodily injury or material damage arising from one and the same incident, regardless of any claims which have arisen or may arise from another incident.

8.3.05. Amount of limitation

With regard to claims other than claims by passengers under article 11.5.17, the degree of liability shall be determined on the basis of the vessel's gross tonnage, as follows:

- (a) Claims in respect of death or bodily injury,
 1. For vessels displacing 101 to 500 tons – 333,000 SDRs;

2. For vessels displacing over 500 tons the above amount shall be augmented as follows:
 - For each ton from 501 to 3,000 tons, by 500 SDRs;
 - For each ton from 3,001 to 30,000 tons, by 333 SDRs;
 - For each ton from 30,001 to 70,000 tons, by 250 SDRs;
 - For each ton over 70,000 tons, by 167 SDRs;
- (b) All other claims,
 1. For vessels displacing 101 to 500 tons – 167,000 SDRs;
 2. For vessels displacing over 500 tons the above amount shall be augmented as follows:
 - For each ton from 501 to 3,000 tons, by 167 SDRs;
 - For each ton from 3,001 to 70,000 tons, by 125 SDRs;
 - For each ton over 70,000 tons, by 83 SDRs;
- (c) In the case of small vessels under 101 tons, liability shall be limited on an all-inclusive basis to 66,600 SDRs in respect of bodily injury and to 33,400 SDRs in respect of material damage.

8.3.06. Modalities of establishing a limitation fund

The procedure shall be determined by the wishes of the owner. He shall submit his application to the court of the vessel's home port if the vessel is Malagasy or of some other port if it is not.

The president of the court shall appoint a consultant rapporteur and a liquidator. The establishment of the fund shall be recorded in a second order, at the request of the applicant and in the light of the consultant's report.

8.3.07. Effects of establishing a limitation fund

By invoking the establishment of a liability limitation fund an owner may obtain the withdrawal of the seizure of his vessel or any other property belonging to him.

The act of invoking limitation or the establishment of a fund shall not entail admission of liability.

8.3.08. Apportionment of limitation funds

A limitation fund shall comprise three parts, assigned as follows:

1. To settlement of claims in respect of death or bodily injury of passengers;
2. To settlement of claims in respect of death or bodily injury of persons other than passengers;
3. To settlement of other claims.

For each part of the fund, the apportionment shall be made among the creditors in proportion to the amounts of their admissible claims.

When the total amount of claims in respect of death or bodily injury of persons other than passengers exceeds the amount of the limitation of liability established for claims mentioned in paragraph 2 above, the excess amount shall be treated on the same footing as all other claims other than those arising either from death or bodily injury under paragraph 3.

8.3.09. Claims settled before apportionment of limitation funds

When, prior to the apportionment of a fund, the owner has paid in full or in part one of the claims mentioned in article 8.3.02, he shall be entitled to take the place of his creditor, on the same footing, in the apportionment of the fund, but only to the extent to which, pursuant to the law of the country where the fund is established, that creditor would have been able to obtain legal recognition of his claim against the owner.

8.3.10. Extension of the option of invoking limitation

The foregoing provisions shall apply to charterers, owners and managing owners, as well as to masters and other persons employed by them at sea or on shore acting in the performance of their functions in the same manner as to the owner himself.

A master or other crew member may invoke the provisions of this chapter even when he has personally committed an act of negligence.

When a vessel's owner, charterer or managing owner is the master or a crew member, the provision contained in the preceding paragraph shall apply only to acts of negligence which he has committed in the performance of his functions as master or crew member.

An insurer who covers liability with regard to claims subject to limitation pursuant to the rules contained in this chapter shall be entitled to invoke these rules to the same extent as the insured party himself.

8.3.11. Conduct extinguishing limitation

A person bearing liability shall not be entitled to limit his liability when it is proved that the damage is a consequence of his personal act or omission, committed with the intention of causing the damage in question or committed recklessly and in the knowledge that the damage would probably result.

Title B Seizure

Chapter 4 Provisional Arrest

Section A. Applicable law

8.4.01. Domestic law

The arrest of vessels flying the Malagasy flag by creditors under Malagasy law shall be governed by the provisions of this chapter.

8.4.02. International law

International arrests effected in States parties to the Convention signed at Brussels on 10 May 1952 concerning vessels of other States shall be governed by that Convention.

Arrests of vessels of other States not parties to the Convention may be governed either by the Convention or by the domestic law of the State where the arrest takes place.

Section B. Required conditions

8.4.03. Conditions relating to the nature of the claim

Authorization for provisional arrest may be granted when a claim appears warranted in principle, regardless of its origin, whether maritime or not.

For States parties to the Brussels Convention, provisional arrest may be requested only in respect of the claims listed in article 1 of the Convention.

However, under article 8 of the Convention, a vessel flying the flag of a State which is not a party may be arrested in one of the States parties in respect of any other claim leading to arrest under the law of that State. In this case, application of the Convention shall be optional.

8.4.04. Conditions relating to designated use

Any vessel as defined in Book 2, chapter 1, of this Code shall be liable to arrest at the risk and peril of the arresting creditor, regardless of the vessel's designated use, whether commercial, fishing or pleasure.

Warships and government vessels used exclusively for a public service may not be arrested.

8.4.05. Conditions relating to ownership

The vessel to which a claim relates may be arrested, regardless of whether the claim arose out of an act of the current owner. Any change of ownership prior to the issue of the arrest order shall be without effect.

Apart from the vessel to which the claim relates, a creditor may have any vessel belonging to his debtor arrested. However, pursuant to the 1952 Convention the arrest of a vessel other than the one to which the claim relates shall be authorized only if that vessel belonged to the debtor or was chartered with its management entrusted to the debtor at the time when the maritime claim arose.

8.4.06. Attachment of cargo

The attachment of goods on board vessels is governed not by maritime law but by general law.

Section C. Procedure

8.4.07. Competent courts

In Madagascar, provisional arrest must be ordered by the president of the commercial court or, failing that, by the president of a court branch. The president shall issue an order authorizing the arrest if the claim appears to him to be founded in principle, without the creditor having to prove that it is enforceable.

8.4.08. Arrest orders

An arrest order shall state the amount for which the arrest is authorized. It shall require the creditor first to prove that he is sufficiently solvent or to deposit a surety to guarantee any possible claim for damages brought against the arresting party. It shall impose on the creditor a time limit within which he must put the merits of his application before the competent court, under pain of nullification of the arrest order.

8.4.09. Forms of arrest

Provisional arrest shall be effected in the forms prescribed below for distraint of movables.

Section D. Effects of provisional arrest

8.4.10. Prohibition on sailing

Provisional arrest does not impair an owner's rights in any way. It prevents the departure of the vessel. To this end, the maritime administrative authority shall refuse the vessel permission to sail and withhold the vessel's papers. The bailiff who enforces the arrest shall install a watchman on board.

8.4.11. Release of vessels against surety

Notwithstanding an arrest, the president of a court of first instance may authorize a vessel to sail on one or more specified voyages. In order to obtain such authorization, the applicant must provide a surety set by the president in the light of the amount of the claim, the legal costs and incidental costs.

The president shall specify the time limit within which the vessel must return to the port of arrest. He may subsequently modify this time limit in the light of circumstances.

If, on the expiry of the time limit, the arrested vessel has not returned to this port, the surety shall be acquired by the creditors, subject to the insurance effects in the event of a casualty covered by hull insurance.

8.4.12. Transcripts of arrest reports

An arrest shall be effective against third parties from the date of its entry in the register of mortgages.

The sale of a vessel shall not be effective with respect to arresting creditors until after its entry in the register.

An order authorizing or denying arrest shall be subject to appeal. Once an arrest has been ordered, it shall be enforceable even when an appeal is entered.

8.4.14. Wrongful arrest

Under an order of replevin an arresting creditor shall be liable for any harmful consequences of his initiative, in particular the costs of replevin and the loss of revenue due to the detention of the vessel.

Chapter 5
Distrain of Movables

8.5.01. Period between demand for payment and distraint

Distrain may not be effected until 24 hours after a demand has been served.

8.5.02. Persons to be served

A demand shall be served on the owner in person at his residence or to his representative in person.

When neither the owner nor a permanent representative is available, the demand may be served on a vessel's master when the claim of the distrainer relates to the vessel or to the voyage.

8.5.03. Expiry of demands to pay

Demands to pay shall expire after 10 days.

8.5.04. Forms of distraint

Distrain shall be effected by a bailiff. The bailiff shall state in his memorandum of distraint:

- The name, profession and domicile of the creditor on whose behalf he is acting;
- The enforcement order under which he is acting;
- The amount of the payment sought;
- The date of the demand for payment;
- The election of domicile made by the creditor in the place of the seat of the court before which the sale is to be sought and in the place where the vessel is moored;
- The name of the owner;
- The name, class, tonnage and nationality of the vessel.
- He shall list and describe the vessel's launches, boats, tackle and other gear, and its provisions and stores.

8.5.05. Notification of owners and summons to appear in court

The distrainer shall transmit a copy of the memorandum of distraint to the owner within a time limit of three days and shall have the owner summoned to appear in a civil court in the place of distraint for the purposes of an order to proceed with the sale of the distrained property.

When an owner is not domiciled in the place where the court sits, the notification and summons shall be served on him in the person of the master of the arrested vessel or, in his absence, in the person of the owner's or master's representative, within the time limits prescribed in article 129 of the Code of Civil Procedure, except that in Madagascar the time limit shall not exceed 30 days.

When the owner is a foreigner who is not in the territory of the Republic of Madagascar and is not represented, the notification and summons shall be served in accordance with the procedure prescribed for civil cases.

8.5.06. Notification of maritime and consular authorities

Copies of a memorandum of distraint shall be transmitted to the maritime administrative authority and to the consul general or consul of the vessel's flag State.

8.5.07. Transcription of memorandum of distraint

A memorandum of distraint shall be transcribed by the maritime administrative authority onto the vessel's registration document and into the register kept in Antananarivo.

This transcription shall be effected within the time limit specified in article 129 of the Code of Civil Procedure, depending on the distance between Antananarivo and the place of distraint.

8.5.08. Notification of mortgage holders

When a vessel is registered in Madagascar, the service responsible for the register of mortgages shall issue a statement of entries. The distraint shall be notified to the listed creditors at the domiciles indicated in their entries within the time limit specified in article 129 of the Code of Civil Procedure, depending on the distance between the elected domicile and the seat of the court which has jurisdiction over the distraint and its consequences.

The notice to creditors shall indicate the date of appearance in court. The period allowed before the appearance shall be calculated as indicated above, on the basis of the distance between the elected domicile and the seat of the court. In Madagascar, the time limits provided for in the present article of this Code shall not exceed 30 days.

When the vessel in question is not registered in Madagascar, the notice shall be sent to the consul general or consul mentioned in article 8.5.06 above.

The maximum period before appearance shall be increased from 30 to 60 days after this notice has been delivered.

Chapter 6 **Sale by Court Order**

8.6.01. Cases in which sale by court order is permitted

The procedure described below shall be followed when a vessel is to be sold by court order following arrest, bankruptcy, or salvage of a wreck, or when a court orders an auction, or when any other court order has been made.

8.6.02. Reserve prices

The court shall establish in its order the reserve price and the conditions of sale. If no offer is made on the day set for the sale, the court shall issue an order setting the date of the bidding at auction and a new reserve price lower than the first one.

8.6.03. Publicizing sales

A sale shall take place in the auction room of the civil court 15 days after the posting of notices and the appearance of an advertisement in a newspaper published in Madagascar, without prejudice to any other publicity which may be approved by the court.

Nevertheless, the court may order that the sale shall take place either before another court or in the offices and with the services of a notary, or in any place in the port where the ship is standing with the services of a notary or, failing that, of a bailiff.

In all these various cases, the question of publicity shall be dealt with in the court order.

8.6.04. Posting of notices

Notices of a sale shall be affixed to the mainmast or to the most visible part of the arrested vessel, at the main door of the court which is conducting the proceedings, in the main square or on the quayside of the port where the vessel is moored, at the chamber of commerce, and at the door of the offices of the maritime district or sub-district.

8.6.05. Content of notices

A notice shall indicate:

- The applicant's name, profession and place of residence;
- The heads under which he is acting;
- His election of domicile in the place where the civil court sits and in the place where the vessel is located;
- The name, profession and domicile of the owner of the arrested vessel;

- The name of the vessel (and, if it is fitted out or being fitted out, the name of the master);
- The vessel's means of propulsion, its gross and net tonnage, and its engine power if it is propelled by engines;
- The place where it is located;
- The reserve price and the conditions of sale;
- The day, date and time of the sale by auction;
- And, in the case of sale after arrest, the amount of the sum due to the applicant creditor.

8.6.06. Time limit for challenges

Challenges shall be lodged and notified to the court registry before the auction.

When such challenges are not lodged until after the auction, they shall be automatically converted into formal objections to the delivery of the proceeds of the sale.

8.6.07. Time limit for formal objections and replies to objections

The objecting party shall have three clear days to furnish a statement of his arguments.

The respondent shall have three clear days to furnish his reply.

The hearing shall be convened by ordinary summons.

Objections to delivery of proceeds shall be admissible for three clear days following the day of the auction; after that time they shall no longer be admissible.

8.6.08. Raising of bids

Raised bids shall not be admissible in cases of sale by court order.

8.6.09. Payment of the price

The successful bidder shall be required to pay the amount of his bid, without costs, to the settlements office of the Treasury Department within 24 hours of the sale, under pain of re-auction.

8.6.10. Failure to pay

If no payment or consignment is made, the vessel shall be re-auctioned, three days after a second public announcement and single notice, and awarded to a bidder; the original successful bidder shall be liable for the payment of costs, the deficit and damages.

8.6.11. Summons of creditors

Within the next five days, the purchaser shall submit an application to the president of the civil court to nominate a judge, to whose court he shall summon the creditors by a notice served at their elected domiciles, with a view to an amicable agreement on the apportionment of the proceeds.

8.6.12. Termination of master's functions

The sale of the vessel shall terminate its master's functions, but he may lodge an application for compensation with the appropriate authority.

8.6.13. Publicity and period of notice

An attendance notice shall be posted in the auction room of the court and shall appear in one of the newspapers printed in Madagascar.

The period of notice shall be 15 days, with allowance for distance.

8.6.14. Notice to creditors who have entered objections

Creditors who have entered objections shall be required to produce the documents supporting their claims to the court registry within three days of the service on them of an official notice by the applicant or by a third party to the proceedings; otherwise, the proceeds of the sale shall be apportioned without them.

8.6.15. Applications for ranking

When the creditors do not agree on the apportionment of the proceeds, a report shall be drawn up detailing their claims and formal statements of dissent.

Within eight days, each creditor shall deposit with the court registry an application for ranking with supporting documents.

At the request of the creditor who acts first, the creditors shall be summoned by a simple extra-judicial notice to appear before the court, which shall rule on all claims, including preferential claims.

8.6.16. Right of appeal

The time limit for appeals shall be 10 days from the date of notification of a decision, subject to the allowances for distance provided for by civil procedure legislation.

An appeal application shall mention the persons to be summoned and contain a statement of the claims, under penalty of nullification.

8.6.17. Ranking of creditors

When an appeal has been lodged within eight days of the court's decision, within the eight days following the expiry of the time limit for appeals the judge previously designated shall draw up a statement of claims ranked in respect of principal, interest and costs. The interest of ranked creditors shall cease to accrue to the detriment of the respondent.

8.6.18. Apportionment of monies among creditors

In the case of preferential creditors and mortgage holders, the ranking and the apportionment of monies shall be in the order prescribed by this Code, and in the case of other creditors in proportion to their claims. All ranked creditors shall be ranked in respect of their principal and their interest and costs.

8.6.19. Costs of legal argument

The costs of legal argument shall not be set against the monies to be apportioned, except for the costs of the most senior counsel.

8.6.20. Orders of supervising judge

By order of the supervising judge the clerk of the court shall deliver the ranked payment slips to the settlements office of the Treasury Department in accordance with the procedure relating to seizure of real property.

The same order shall authorize the deletion by the maritime administrative authority of the entries of the unranked creditors. Such deletion shall be effected at the request of any party concerned.

8.6.21. Seizure of one of more shares or quirats

The seizure of one or more shares in a vessel and the apportionment of the proceeds of a sale by auction shall be governed by the rules set out above, with the changes specified below.

The seizure shall be notified to the vessel's other joint owners in accordance with the provisions of article 8.5.08.

When the seized shares represent more than half the vessel, the sale shall be extended to the entire vessel, subject to justified opposition by the other joint owners. The supervising court shall rule before the sale.

BOOK 9.
OPERATION OF VESSELS

Title A
Ownership

Chapter 1
Owners and operators

9.1.01. Definition

An operator is a person who operates a vessel on his own behalf, regardless of whether he is its true owner.

9.1.02. Fishing and pleasure vessels

In the case of fishing and pleasure vessels, the operator is the vessel's owner, or its hirer in the case of hired vessels.

9.1.03. Commercial vessels

In commercial navigation, a vessel's owner is presumed to be its operator.

In the case of hire or charter, the hirer or charterer shall be deemed by third parties to be the operator if he is mentioned in the central register of the fleet and in the vessel's certificate of registry.

9.1.04. Liability of operators

The provisions of the chapter on owners' liability shall apply to an operator as defined above, regardless of whether he appointed the master.

The liability of the operator recorded in the register and certificate referred to in article 9.1.03 shall take the place of the true owner's third-party liability.

9.1.05. Liability of employees

An operator shall be liable in civil law for persons employed by him on shore or at sea when they are acting in the exercise of their functions, in particular the master and crew members and the pilot, even if he did not himself recruit them.

Chapter 2
Joint ownership

9.2.01. Operation in joint ownership

When a vessel's joint owners operate it jointly, they automatically constitute a joint ownership governed by the provisions set out below, unless agreed otherwise in writing.

9.2.02. Voting rights and required majority

Decisions relating to a vessel's operation shall be taken by a majority of the interests.

A vessel may not be laid up or mortgaged except by decision of two thirds of the interests.

Each joint owner shall have the number of votes corresponding to the number of his shares.

9.2.03. Legal remedies

Majority decisions may be appealed by the members of the minority before the commercial court having jurisdiction in the vessel's home port. Such decisions shall be quashed in the event of a procedural irregularity or when the contested decision is contrary to the interests of the proper operation of the vessel.

When there is no clear majority or in the event of repeated nullification of a majority decision, the court may, at the request of one of the joint owners, either appoint a temporary manager or order the vessel to be sold by auction or order both these measures.

9.2.04. Operation entrusted to one or more managers

The majority may entrust a vessel's current management to one or more managers, appointed either from among the joint owners or from outside the joint ownership.

Such managers may not be removed by the majority except on serious grounds.

9.2.05. Announcement of managerial arrangements

The appointment and dismissal of managers shall be made known to third parties by entry in the central register of the fleet and in the vessel's certificate of ownership.

When the appointment of a manager or managers is not made known to third parties in this way, all the vessel's joint owners shall be deemed managers.

9.2.06. Unanimity of managers' decisions

When there is more than one manager, they shall act by common accord.

9.2.07. Powers of managers with respect to third parties

Managers shall have every power to operate a vessel on the company's behalf in all circumstances.

Any contractual limitation of the powers of managers shall be without effect with respect to third parties.

9.2.08. Powers of managers with respect to masters

A master must comply with instructions from the managers.

9.2.09. Liability for employees' actions

All the joint owners shall be jointly liable for the employees mentioned in article 9.1.05.

9.2.10. Liability for commitments entered into by managers

The joint owners shall participate in the operating profits and losses in proportion to their shares in the vessel. They shall be liable indefinitely and jointly towards third parties in respect of the commitments entered into by a manager on behalf of the joint ownership.

9.2.11. Dissolution of joint ownership

The death, incapacity or bankruptcy of a joint owner shall not automatically entail the dissolution of a joint ownership.

A joint ownership shall be dissolved following the expiry of the agreed term or the loss or sale of the vessel. Dissolution may also be ordered by the commercial court in the vessel's home port at the request of joint owners representing at least one half of the interests if such dissolution is justified.

Chapter 3

Operating companies

9.3.01. Companies incorporated under general law

Vessels may be operated by operating companies incorporated under general law.

9.3.02. Public limited companies

Companies whose capital exceeds 100 million Malagasy francs shall be incorporated, under pain of nullification, as public limited companies.

9.3.03. Semi-public companies

Semi-public companies may be constituted; the Malagasy State shall participate in their capital.

9.3.04. Registry

When a joint-venture company is constituted to operate a vessel, only the name of the manager, an apparent member, shall be entered in the central register of the fleet as the sole operator.

Title B Charters

Chapter 4 **Charter agreements**

9.4.01. Definition

Under a charter agreement an owner undertakes to make a vessel available to a charterer in return for payment of freight.

There are three types of charter agreement: bareboat, time, and voyage.

9.4.02. Residual provisions and wishes of the parties

The conditions and the effects of a charter shall be set down by the parties in a contract; they shall otherwise be governed by the provisions of this Title.

9.4.03. Constitution of agreements in writing

Charter agreements shall be proved by a written instrument. The charter party is the instrument which sets out the commitments of the parties.

This rule of proof shall not apply to vessels having a gross tonnage of under 25 tons.

9.4.04. Endorsement by the maritime administrative authority

A copy of any charter party concerning a vessel or a charterer of Malagasy nationality shall be deposited with the maritime administrative authority. It may not be communicated to third parties without the consent of one of the parties.

A charter shall be entered in the central register of the fleet, extracts from which may be delivered without restriction. The entry shall specify the identity, nationality and domicile or principal place of business of the owner and the charterer, the name of the vessel, and the nature and duration of the charter.

By the fact and on the date of this registration the corresponding charter party shall be effective against third parties, in particular creditors, insurers or purchasers of the vessel.

9.4.05. Sales of chartered vessels

The sale of a chartered vessel shall be notified to the charterer. Within the 30 days following such notification he may choose either to cancel or to maintain the charter.

9.4.06. Endorsement and delivery fees

The endorsement of charter parties and the delivery of the copies mentioned in article 9.4.04 shall be subject to the provisions of article 2.8.04.

Chapter 5
Bareboat charters

9.5.01. Definition

Under a bareboat charter agreement the owner undertakes to hire to the charterer for a specified time a vessel which is not fitted out or equipped.

9.5.02. Content of charter parties

A charter party shall specify:

1. Particulars identifying the vessel;
2. The names of the owner and charterer and their nationalities;
3. The duration of the contract;
4. The date and place on which the contract comes into force;
5. The amount of the freight, known as the charter hire in this type of charter.

A charter party shall be accompanied by a description of the vessel and its gear, tackle and attachments.

9.5.03. Obligations of owners

Subject to any provision to the contrary, an owner shall be obliged only to hand the designated vessel over to the charterer on the date and at the place agreed, in a good state of seaworthiness, fit for the envisaged transport or fishing operations, and uninsured.

An owner shall be responsible for repairs and replacements required by the vessel's specifications, but this responsibility shall not include maintenance of the vessel's seaworthiness throughout the duration of the charter.

The owner shall also remit to the charterer the statutory ship's papers.

9.5.04. Delivery with master and crew

When it is envisaged that a vessel is to be delivered with a master and crew on board, the agreement shall specify the date and time from which such master and crew come under the authority and responsibility of the charterer.

9.5.05. Obligations of charterers

As soon as he takes possession of a vessel, the charterer becomes its operator. The vessel's nautical and commercial management becomes his responsibility. All expenditures connected with management, stores, repairs and reprovisioning shall be borne by the charterer.

9.5.06. Insurance of vessels

Unless agreed otherwise, a charterer shall insure the vessel and provide proof both of the insurance policy and of payment of the premiums, if the owner so requires.

9.5.07. Return of vessels

A charterer shall return the vessel, on the date and in the port agreed, in the condition in which he received it, with allowance for normal wear.

9.5.08. Liability of the two parties

In the relations between an owner and a charterer each shall be liable to the other for any failure to fulfil his obligations.

The charterer shall be liable for damage to the vessel, except in cases of *force majeure*.

However, the parties may agree that the charterer shall bear the risk of damage or loss of the vessel due to accidents or *force majeure*.

9.5.09. Third-party liability

Where third parties are concerned, the charterer alone shall be liable for damage caused by the vessel.

When preferential creditors of a charterer-operator assert their preferential claims to the vessel, the vessel's owner may avail himself of his remedies against the charterer-operator.

9.5.10. Statute of limitations

Actions arising from bareboat charters shall be subject to the same time limits as actions arising from time charters.

Chapter 6 **Time charters**

9.6.01. Definition

Under a time-charter contract an owner undertakes to make a vessel available to a charterer for a specified time.

9.6.02. Content of charter parties

A charter party shall state:

1. Particulars identifying the vessel;
2. The names of the owner and the charterer;
3. The name of the master;
4. The amount of the freight;
5. The duration of the contract.

9.6.03. Obligations of owners

An owner shall be obliged to deliver the designated vessel, on the date and at the place agreed, in a good state of seaworthiness, suitably fitted out and equipped for carrying out the operations envisaged in the charter party, and to maintain it in that state, fitted out and equipped, throughout the duration of the contract.

9.6.04. Difference from bareboat charter

The owner retains the vessel's nautical management throughout the duration of the contract.

9.6.05. Damage to cargo

An owner shall be liable for damage to cargo when it is established that the damage is due to failure to fulfil the obligations specified in article 9.6.03 or to defects in the vessel's nautical management, subject to the provisions of article 11.2.15.

9.6.06. Obligations of charterers

A charterer shall be responsible for the vessel's commercial management.

He shall be responsible for the vessel's stores. He shall furnish the vessel with sufficient stores to ensure its proper operation and the safety of navigation.

All expenses connected with the vessel's commercial operation shall be borne by the charterer.

9.6.07. Damage to vessels

A charterer shall be liable for damage to the vessel caused by his commercial operation.

9.6.08. Powers over masters

Within the limits stated in the charter party a master shall obey the owner's instructions concerning any matter connected with the vessel's commercial management.

9.6.09. Freight due

Freight shall run from the day on which the vessel is handed over to the charterer under the terms of the contract. It shall be payable monthly in advance. It shall not be payable in all eventualities.

9.6.10. Suspension of freight

Freight shall not be due in respect of periods exceeding 24 hours when the vessel cannot be used commercially owing to a circumstance attributable to the owner or following arrest by the Malagasy State or a foreign State.

In the case of final interruption or suspension, freight shall be calculated on a daily basis. Freight shall be due for any part of day.

9.6.11. Statute of limitations

Actions arising from a time-charter contract shall be subject to a time limit of one year.

The time limit shall run from the expiry of the term of the contract or its final interruption.

Chapter 7

Voyage charters

9.7.01. Definition

Under a voyage-charter contract an owner makes all or part of a vessel available to a charterer for one or several shipments to one or several destinations of the cargoes specified in the charter party.

9.7.02. Content of charter parties

A charter party shall state:

1. Particulars identifying the vessel;
2. The names of the owner and the charterer;
3. The quantity of the cargo and, where necessary, its nature;
4. The places of loading and unloading;
5. The time of loading;
6. The time allocated for loading and unloading;
7. The basis for calculation of the freight.

9.7.03. Obligations of owners

An owner shall be obliged:

1. To deliver the designated vessel, on the date and at the place agreed, in a good state of seaworthiness, suitably fitted out and equipped for carrying out the operations envisaged in the charter party, and to maintain the vessel in that state, fitted out and equipped, for the duration of the contract;
2. To make the vessel available to the shipper or the consignee for loading or unloading within a time limit known as laytime.

9.7.04. Difference from time charters

The owner retains the vessel's nautical and commercial management.

9.7.05. Obligations of charterers

A charterer shall complete the vessel's loading and unloading during the laytime.

When he does not do so within that time limit, he shall owe compensation. This compensation, known demurrage, shall be treated as a freight supplement.

9.7.06. Calculation of laytime

Laytime shall run without interruption, and non-working days and public holidays shall not be deductible. Only periods when unloading or unloading is prevented by an act of the owner or the master shall be deductible.

Unless the two parties agree otherwise, the duration of laytime shall be calculated according to the normal practice of the port, the nature of the goods, and the number of the vessel's hatches.

9.7.07. Starting point of the time limit

Unless otherwise indicated by custom or agreement, a master shall notify the charterer or his representative that the vessel is ready for operations to begin. This notification shall mark the beginning of the laytime.

Demurrage shall run automatically from the expiry of the laytime. It shall not be necessary to notify the shipper or the consignee.

9.7.08. Transfer of laytime and dispatch money

Laytime shall be calculated by the day and by the hour on a time sheet.

When an overall laytime has been set for loading and unloading operations, any time saved in the port of loading shall be credited to the consignee.

When separate laytimes have been set for loading and unloading, laytime shall not be transferable unless the parties agree otherwise.

The shipper or the consignee shall be entitled to dispatch money for time saved only if the contract so provides.

9.7.09. Release from liability for cargo

An owner shall be liable for the goods received on board by the vessel's master within the limits specified in the charter party.

He may obtain release by establishing that he has duly fulfilled the obligations set out in article 9.7.03 and that the damage is not due to a failure in that respect or that the damage is due to faulty seamanship on the part of the master or his subordinates.

9.7.10. Termination of contracts without damages

A contract shall be terminated without damages on either side when, before the vessel sails, a prohibition is imposed on trade with the country to which the vessel is bound or in the event of any other act of force majeure which renders the voyage impossible.

When all or part of the cargo has already been loaded on board, the charterer shall be liable for the loading charges and the owner for the unloading charges.

9.7.11. Termination of contracts with compensation

A charterer may terminate a contract before any loading has begun. In such cases, he shall pay half of the agreed freight as compensation.

9.7.12. Force majeure

When an act of *force majeure* prevents a vessel from sailing only for a limited time, the contract shall remain in force, and no damages shall be payable in respect of the delay.

The contract shall likewise remain in force and no extra freight shall be payable when the act of *force majeure* occurs during the voyage.

9.7.13. Blockades

In the event of a blockade or other lengthy impediment to entering the port to which the vessel is bound, in the absence of orders to the contrary the master shall put in to a neighbouring port where he can unload.

9.7.14. Arrests during voyages

When a vessel is arrested during a voyage as a result of an event not attributable to the owner, the charterer may unload the cargo at his own expense but he shall owe the entire freight agreed for the voyage.

9.7.15. Unloading during voyages

A charterer or his representative may unload goods during a voyage, but he shall owe the entire freight agreed for the voyage.

9.7.16. Preferential rights in respect of payment of freight

An owner shall have a preferential right to the cargo in the event of non-payment of freight.

When an owner has received no payment at the time of discharge of the cargo, he may not retain goods on board but he may consign them to a third party or have them sold.

Such consignment or sale shall be authorized by court order, on application. Applications may be lodged at any time.

9.7.17. Statute of limitations

Actions arising from a voyage charter shall be subject to a time limit of one year.

This time limit shall run from the time of discharge of the goods or the occurrence of the incident which ended the voyage.

Chapter 8

Sublets

9.8.01. Definition

A charterer may sublet a vessel by ceding his rights under the charter party, provided that the charter party does not prohibit such action.

9.8.02. Continuation of charterer's obligations towards the owner

Subletting leaves a charterer bound to the owner by his obligations under the charter party.

9.8.03. Direct action for payment of freight

An owner shall be entitled to take direct action against a subletter for payment of freight still owed by the charterer, up to a limit of what the charterer owes.

Subject to this condition, a sublet shall not establish any direct relations between an owner and a subletter.

9.8.04. Statute of limitations

Actions arising from sublets shall be subject to limitation under the provisions of articles 9.5.10, 9.6.11 and 9.7.17 as the case may be.

Chapter 9

Hire of vessels and floating establishments not intended for transport of goods

9.9.01. Application of rules of civil law

The hire of barges, lighters, tanks, floating cranes and other vessels and equipment for use in sea ports shall be governed by the rules of civil law applicable to the hire of movable property and by the agreement between the parties.

9.9.02. Floating establishments not intended for maritime navigation

The same rules shall apply to the hire of any floating establishments not intended for maritime navigation.

9.9.03. Vessels used for purposes other than transport of goods

The hire of vessels intended for the transport of passengers, pleasure use, towing, salvage, scientific use, laying of cables and, more generally, for purposes other than transport of goods shall be subject, in the absence of specific agreements between the parties, to the provisions of this Code concerning time or bareboat charters of cargo vessels supplemented by the rules of civil law applicable to the hire of movable property.

BOOK 10.
PERSONNEL AND AUXILIARY PERSONNEL

Title A
Seagoing personnel

Chapter 1
Masters

10.1.01. Definition

For the purposes of this Code, “master” means any person regularly entrusted with the command of a vessel, regardless of its tonnage or class.

10.1.02. Appointment and dismissal

The choice and the appointment of a master shall rest with the owner, subject to the provisions of article 3.9.02.

An owner may at any time dismiss a master without notice, notwithstanding any agreement to the contrary, in the circumstances specified in article 3.8.04, as well as under article 2.9.04 when the master is a joint owner of the vessel.

10.1.03. Functions

From the time of his appointment, certified by the maritime administrative authority, a master shall exercise:

1. Administrative and disciplinary functions;
2. Nautical functions;
3. Commercial functions.

He shall obey the owner’s instructions and, when necessary, seek instructions from the owner on any question relating to his commercial functions.

An owner shall not interfere in the administrative, disciplinary or nautical functions of the master, who shall exercise them in accordance with article 3.9.01.

10.1.04. Log-keeping

A master shall keep the vessel’s log or have it kept under his supervision and shall ensure that record books, machinery and telecommunications equipment are kept in good order.

The log, issued with a serial number and endorsed by the maritime administrative authority, shall record in addition to the usual meteorological and nautical information:

1. Orders issued by the master concerning navigation and the regulation of shipboard life;
2. Accounts of all important incidents affecting the vessel or the voyage;
3. In the absence of the discipline book referred to in article 7.2.02, punishments imposed and disciplinary measures ordered;
4. Decisions taken during the voyage in the cases envisaged in the following article.

The entries shall be made on a daily basis, and no days shall be left blank. They shall be signed by the master every day.

10.1.05. Consultation of the crew

A master shall seek the opinions of the vessel's other officers and of the two most senior skilled seamen or crewmen in the following cases:

1. Abandonment of the vessel at sea;
2. Evacuation of the vessel at sea by all or some of the crew members and passengers;
3. Jettison of cargo;
4. Consumption on board of all or part of the cargo in the event of a shortage of victuals, fuel or other essential stores;
5. Pledging or sale of cargo in the circumstances described in article 10.1.14.

In situations of serious emergency a master need consult only two of his officers with respect to the decisions specified in the first three paragraphs above.

The opinions of officers and senior crew members shall not be binding on a master, who shall remain sole judge of his own decisions.

These opinions shall be recorded in the log and signed by the persons concerned, unless it is impossible to do so.

10.1.06. Liability

A master shall be liable for all faults in the exercise of his functions, except in cases of *force majeure*.

10.1.07. Mandatory documents

A master shall have on board the navigation certificates and the other papers and documents prescribed by the regulations.

10.1.08. Steering of vessels

A master shall steer his vessel in person when entering, crossing or leaving ports, roadsteads, canals and rivers, as well as in all difficult circumstances.

The presence of a pilot on board, even when mandatory, shall not affect this duty.

10.1.09. Loading of goods on own account

A master is prohibited from loading goods on board his vessel on his own account without the owner's express written authorization.

If a master infringes this prohibition, he shall owe the owner compensation equal to double the freight corresponding to the goods in question.

10.1.10. Representation of owners

Away from the vessel's home port and in any other port or place where the owner or an authorized representative of the owner does not live, the master shall be the owner's legal representative.

In this capacity he may act in legal proceedings, both as applicant and as respondent, and he may accept any judicial or extra-judicial documents addressed to the owner.

He may also, in an emergency, take any measures on behalf of the owner to protect the owner's rights.

He may incur the necessary expenditure for the preservation of the vessel, the continuation of the voyage, normal provisioning, and the payment of the crew.

10.1.11. Recruitment of seafarers

In the course of a voyage a master may conclude additional articles of agreement, on the same terms, in order to bring the crew up to strength.

10.1.12. Management of the affairs of shippers or consignees

In the absence of any local representative of the owner or the shippers, a master may institute or apply for any legal proceedings to protect the rights of shippers or consignees. In such cases, the owner represented by the master shall be regarded as the business manager of the shippers and consignees.

10.1.13. Commitments requiring authorization by owners

In the vessel's home port or in any other place where the owner or an authorized representative of the owner lives, a master may not incur expenditure or sign commitments without the specific authorization of one of them.

10.1.14. Pledging or sale of cargo

If in the course of a voyage expenditure proves necessary for the repair of damage or for the subsistence of the crew and passengers, a master may borrow against the vessel and pledge or sell all or part of its cargo up to a limit of the sum required to meet the needs.

Before entering into such commitments, he shall seek the opinions referred to in article 10.1.05 and authorization from the owner or, if communication with the owner is not possible, from a competent court through a Malagasy consular authority or, failing that, from a local magistrate.

10.1.15. Improper commitment

A master who has without need consumed, pledged or sold all or part of the vessel's cargo or stores or has appropriated the vessel's gear, tackle, machinery or attachments shall be prosecuted and punished under articles 7.4.11 and 7.4.12.

He shall be prosecuted for falsification of commercial documents and, where appropriate, for fraud if he records fictitious damage or expenditure in his accounts or reports.

In these various cases, a master shall be personally required to make good the sums, goods and objects diverted to his own use, removed or obtained by fraud, and the period of limitation shall not begin to run in his interest until the day on which the owner discovers the fraud.

10.1.16. Requisition of ship's stores

When in the course of a voyage foodstuffs, fuel or other essential stores run short, a master may requisition foodstuffs and other goods carried on the vessel as cargo after seeking the opinions referred to in article 10.1.05, and the owner shall be required to reimburse the value to the owners of such cargo.

10.1.17. Liability for acts of persons on board

Crew members, shipboard agents and pilots are not employees of the master.

He shall not bear civil liability for any damage that they may cause to others.

10.1.18. Endorsement of logs and deposit of voyage reports

Within 24 hours of arrival a master shall have his log endorsed by the maritime administrative authority or a consular authority.

When any unusual incidents affecting the vessel, the persons on board or the cargo have occurred during the voyage, the master shall submit a detailed report on such incidents on arrival in the first port of call. This report shall be deposited in Madagascar with the registry of any court or court branch, or abroad with a consul of Madagascar or, failing that, with the registry of a competent local court.

If the vessel is wrecked or runs aground, the master shall also swear under oath before a consul or a competent court that his report is true and he shall call upon members of the crew or passengers to testify.

In the absence of a court or consul in the place of disembarkation, the report and the testimony mentioned above may be replaced by a declaration made before a notary or other equivalent public official, and the master shall obtain a receipt for or a certified copy of such declaration.

10.1.19. Discharge of cargo following unusual incidents

In the cases described in the preceding article, except in the event of imminent peril, a master may not discharge any goods before making his report and complying with any measures of investigation or verification that may be ordered either by the maritime administrative authority or by a consular or judicial authority.

10.1.20. Replacement of masters

If in the course of a voyage a master dies or disappears or is unable to exercise his command, he shall be replaced automatically by the certified bridge officer holding the next highest rank under Malagasy regulations.

When there is no other bridge officer, the command of the vessel shall devolve in the same order to the engine room officers, then to the most senior skilled seaman or ordinary seaman.

When two officers hold the same rank, the order of entry in the crew list shall be followed.

At the first port of call the acting master shall communicate with the owner with a view to the appointment of a new master.

A new master may be appointed, in the absence of instructions from the owner, by a consul of Madagascar.

10.1.21. Valid status of acting masters

The provisions of article 7.5.10 shall not apply to a member of the crew who assumes command of a vessel in the circumstances described in the preceding article.

An acting master shall record in the log the date and time when he took command.

An owner shall be validly represented by an acting master and may not repudiate him unless he acts in bad faith.

Chapter 2

Shipboard agents

10.2.01. Role

A shipboard agent is a representative of the owner or charterer travelling on board:

- A fishing vessel in order to direct the fishing operations and attend to the conservation or marketing of the catch;
- A passenger vessel, in particular a cruise vessel, in order to provide the passengers with services other than maritime transport services;
- A cargo vessel in order to supervise the loading, unloading and proper preservation of the cargo.

10.2.02. Officer rank

A shipboard agent has officer rank. Regardless of the scope of his powers, he shall be subject to the master's authority in accordance with the provisions of article 3.9.01.

10.2.03. Articles of agreement

A shipboard agent shall be chosen freely by the owner or charterer.

A shipboard agent's articles of agreement shall be subject to the rules contained in articles 3.3.01 to 3.3.07 and 3.7.01 to 3.7.04 of this Code.

A shipboard agent may be dismissed by the owner or charterer who appointed him under the same terms as apply to dismissal of a master.

A master may not dismiss a shipboard agent.

10.2.04. Powers withdrawn from masters

An owner or charterer may not assign to a shipboard agent any role in the administrative, disciplinary or nautical functions which are the responsibility of the master.

The articles of agreement of a shipboard agent shall specify the commercial functions assigned to the agent and withdrawn from the master. The master shall be deemed to have retained all the powers which have not been expressly delegated to the agent.

10.2.05. Certificate of appointment

A copy of the certificate of appointment of a shipboard agent, signed by the owner or charterer, the master and the shipboard agent, shall be attached to the crew list.

This certificate may confer on a shipboard agent the power *inter alia*:

- To determine the vessel's movements of a commercial nature, and the ports of call and stopovers;
- To sign bills of lading;
- To take on board and deliver the goods transported;
- To verify such goods at the time of loading and unloading;
- To enter or accept any endorsements in this connection;
- To attend to the preservation of the goods during transport;
- To pay certain expenses connected with passengers or cargo;
- To sell all or part of a catch;
- To keep the account books pertaining to these various operations.

10.2.06. Liability vis-à-vis owners

A shipboard agent shall be liable in respect of his management to the owner or charterer who appointed him, in the same way as a salaried employee.

10.2.07. Third-party liability

An owner or charterer shall bear civil liability for a shipboard agent towards third parties in respect of all the acts connected with his functions, but within the limits specified in articles 9.1.04 *et seq.* of this Code.

Chapter 3

Crews

10.3.01. Conditions of employment

The conditions of recruitment, employment and work of officers, skilled seamen and crewmen on board Malagasy vessels shall be governed by the provisions of Book 3 of this Code.

10.3.02. Status

Regardless of the mode of recruitment of a crew member, he shall be deemed to be an employee of the vessel's operator.

10.3.03. Third-party liability

An owner or operator shall be liable for faults of crew members under the conditions relating to owners and operators contained in articles 9.1.01 *et seq.* of this Code.

Title B
Owners' agents on shore

Chapter 4
Permanent agents

10.4.01. Delegated powers

An owner's permanent agents, publicly recognized as such in the ports or other places where they reside, may validly enter into commitments on behalf of the owner whom they represent in all matters relating to the normal operation of a vessel.

To this end, a contractual limitation of an agent's powers shall not be effective against third parties acting in good faith who may have been unaware of such limitation.

However, an owner's agent shall have to prove a special power conferred by the owner in the event of the sale, mortgage, fitting out or laying up of a vessel.

10.4.02. Liability in the capacity of employee

The agents defined in the preceding article are employees of the owner, and their faults shall trigger the owner's liability under general law.

Chapter 5
Shipping agents

10.5.01. Role

A shipping agent is an agent of the owner. His main role is to speed up vessels' turnaround time. To this end he shall:

- Attend to a vessel's arrival in port and replenishment of its stores;
- Receive goods discharged into his care by a master with a view to delivering them to the consignees or their representatives on behalf of the owner;
- Receive goods delivered to him by a shipper or his representative with a view to passing them to the master for loading on board;

A shipping agent is usually remunerated by a percentage commission.

10.5.02. Election of domicile

The mere fact of assigning a vessel to a shipping agent in Madagascar means that the owner must opt for the agent's domicile in respect of all documents and acts concerning the vessel or its cargo. Any judicial or extra-judicial document addressed to an owner may be validly served on his agent, even after the vessel has sailed.

10.5.03. Liability towards owners

A vessel's shipping agent shall be liable towards the owner in accordance with the conditions of his agency.

Towards consignees of discharged goods he shall be liable only for personal fault or fault on the part of his own employees. He shall not be personally liable for the proper execution of a maritime transport contract, even if he is responsible for collection of the freight.

10.5.04. Personal liability towards third parties

A shipping agent shall be personally liable for payment of pilotage fees, port charges and other debts contracted by a vessel, as well as for fines imposed on a vessel or its crew.

10.5.05. Conditions of exercise of the profession

Any person who wishes to exercise the profession of shipping agent shall provide a surety, the amount of which shall be set by decree.

10.5.06. Overlapping functions

The fact that one and the same person acts simultaneously as shipping agent, forwarding agent and stevedore shall not be grounds for nullification of the corresponding contracts when these various services are honestly furnished and are separate de facto and de jure.

Title C
Auxiliary agents

Chapter 6
Forwarding agents

10.6.01. Role

A forwarding agent or freight forwarder acts as the agent of the persons holding title to the goods. He usually acts as the agent responsible for receiving goods dispatched by land or by air and for loading them on a vessel with a view to transport by sea or vice-versa. He may act merely as a representative responsible for concluding a transport contract and completing the customs and port formalities. He often acts as a transport agent for the purpose of groupage and transport of grouped goods.

10.6.02. Endorsements against masters

A forwarding agent shall enter against the maritime carrier or his representative any necessary endorsements with respect to the condition or quantity of goods at the time of delivery or in the event of non-delivery.

When goods are transported under a bill of lading, a forwarding agent shall comply for the purposes of endorsement with the conditions and time limits set out in article 11.2.23 of this Code.

In the absence of endorsements, a forwarding agent shall be deemed to have received the goods in the condition and quantity described in the bill of lading. This assumption shall be subject to proof to the contrary in the relations between the forwarding agent and the maritime carrier.

10.6.03. Liability as employee

A forwarding agent shall be liable as an employee for any fault in the performance of the functions described above.

10.6.04. Liability as employed depository

When he is expressly commissioned to do so, a forwarding agent shall act as depository of the goods and treated as an employee in that capacity.

When he is not so commissioned, and in the absence of the consignee or an authentic claimant of the goods at the time of their delivery, a forwarding agent shall be required to deposit the goods in a warehouse.

When it is impossible to have the goods transferred to a warehouse or to secure equivalent protection for them against the weather and theft, a forwarding agent shall be released from his obligations as depository of the goods if the consignee has not taken delivery of them on the expiry of a time limit of 48 hours counted from the day after the dispatch of a notice indicating the cargo's arrival.

10.6.05. Liability for damage and loss

A forwarding agent shall be liable for damage or loss of goods in his hands, unless he proves that the damage or loss is not attributable to him.

10.6.06. Statute of limitations

Actions brought against a forwarding agent by persons claiming title to goods shall be subject to the same time limits as actions brought by them against a maritime carrier.

Chapter 7 **Stevedores**

10.7.01. Definition

Stevedoring includes all the legal and practical operations involved in the acceptance, delivery, handling, transport and safekeeping of goods at the time of loading, unloading or transshipment.

No stevedoring operation shall be deemed an operation of maritime, river or land transport, even if it is effected by means of boats, floating establishments or vehicles.

10.7.02. Scope

The provisions of this chapter shall apply to all stevedoring operations in Madagascar, regardless of the legal status of the stevedoring enterprise or of the origin of the contract under which it is acting.

10.7.03. Tacit agreement

A stevedoring contract may be constituted by express or tacit agreement.

A tacit agreement implies:

- At the time of loading, the delivery of the goods to the stevedore by a shipper or depository;
- At the time of unloading, the unloading of the goods to the stevedore over the side of the vessel with a view to their delivery or transshipment.

10.7.04. Prohibited interests

Unless agreed otherwise, a stevedore shall be deemed to be acting:

1. On departure, on behalf of the shipper before acceptance of overside delivery of the goods by the maritime carrier; on arrival, on behalf of the consignee after overside delivery by the said carrier;
2. On departure, on behalf of the maritime carrier during the loading and stowage operations; on arrival, during the unloading operations.

10.7.05. Dangerous goods

Inflammable, explosive or other dangerous goods which would not have been accepted by a stevedore if he had been aware of their nature may at any time be destroyed or rendered harmless by him without compensation of the persons having title to the goods. Third parties responsible for delivering such goods to a stevedore may be held liable for any damage and costs resulting from their handling.

When a stevedore is aware of the dangerous nature of the goods but has nevertheless accepted them, he may not destroy them or render them harmless unless they would imperil human life, installations or other goods.

10.7.06. Release from liability

A stevedore shall be liable for all apparent losses or damage of goods in his hands.

He shall be released from this liability if he proves that the apparent losses or damage are attributable, partially or entirely, to accidents, *force majeure*, strikes or lockouts or other work stoppages or difficulties due to any cause whatsoever, inherent defects in the goods, or insufficient or ineffective packaging.

10.7.07. Engagement of liability

A stevedore shall be held liable for non-apparent losses or damage only if such losses or damage result from an act of the stevedore or his employees. The burden of proof shall rest with the shipper, consignee or maritime carrier.

10.7.08. Extent of liability

In all cases a stevedore may be held liable:

1. On departure, from the acceptance of goods on shore from the hands of a shipper or his representative until their overside delivery to a vessel for transport;
2. In the case of transshipment, from the overside acceptance of goods from a vessel until their overside delivery to another vessel;
3. On arrival, from the overside acceptance of goods from a vessel until their delivery to a consignee, forwarding agent or any other authentic claimant; when such agent or claimant is not present at the time of delivery, the provisions of article 10.6.04 shall apply to the stevedore.

10.7.09. Liability for delays

A stevedore shall be liable for delays in practical stevedoring operations only if such delays are caused by his own action or action of his employees and excluding cases of *force majeure*.

10.7.10. Statements of proof

A stevedore may extinguish his liability by proving that the losses, damage or delays with which he is charged result from fault on the part of the maritime carrier or the shipper or consignee.

He shall always be entitled to request the issuance of a statement of proof of the condition of the goods on their reception.

Any clause which may release a stevedore from his liability under this Code shall be null.

10.7.11. Endorsements against carriers

Even in the absence of special instructions, a stevedore has a duty, at the time of overside delivery, to enter endorsements against a maritime carrier if the apparent condition and quantity of the goods do not correspond to the statements in the bill of lading.

He shall keep written proof in whatever form he chooses and make it available to the consignee, shipper or maritime carrier.

In the absence of endorsements, a stevedore shall be deemed to have received the goods in the condition and quantity stated in the bill of lading. But this presumption may be invoked only by a consignee.

10.7.12. Endorsements against stevedores

In the event of apparent losses or damage of goods, a consignee shall enter written endorsements against the stevedore no later than at the time when he takes delivery; the goods shall otherwise be deemed, unless there is proof to the contrary, to have been received by the consignee in the condition and quantity in which they were unloaded from the vessel into the stevedore's hands.

Such endorsements may be expressed in any written form, including letters missive and annotations on receipts or on delivery or discharge notes sent or returned to a stevedore.

In the case of non-apparent losses or damage, endorsements may be validly notified within three days of receipt of the goods, not counting public holidays.

Payment of the cost of stevedoring shall not prevent subsequent endorsements.

10.7.13. Damage and losses due to accidents

When stevedoring operations are carried out in a roadstead in a Malagasy port away from the usual handling stations and goods are lost or damaged as a result of a collision with another vessel, stranding, shipwreck, or collision with a fixed mobile or floating hull suffered by the barge or other vessel containing the goods, the stevedore shall be held liable only if responsibility for the accident is attributable to him or to his employees.

10.7.14. Limitation of liability

A stevedore may invoke the exemptions and limitations which a carrier may invoke under article 11.2.16 *et seq.*

10.7.15. Exceptions to limitation of liability

The limitation of liability provided for in the preceding article shall be set aside in the event of serious fraud on the part of a stevedore. The burden of proof of the fraud or of serious negligence shall rest with the party asserting the stevedore's liability.

10.7.16. Statute of limitations

Actions against a stevedore in respect of losses or damage shall be subject to a time limit of one year except when a criminal offence is involved.

All other actions arising from a stevedoring contract shall be subject to a time limit of five years.

These time limits shall run in the case of total loss from the day on which the goods should have been delivered, and in all other cases from the day on which the goods were delivered, offered or presented to the consignee or other person entitled to receive them. In the absence of such persons, the time limit shall run from the expiry of the 48-hour time limit mentioned in article 10.6.04.

BOOK 11.

MARITIME TRANSPORT AND SALES

Title A

Transport of goods

Chapter 1

Common provisions applying to all transport of goods

11.1.01. Obligations of carriers

A maritime carrier shall be required before the start of a voyage to take due care:

- (a) To put the vessel in a good state of seaworthiness in the light of the voyage to be made and the goods to be transported;
- (b) To fit out, equip and provision the vessel appropriately;
- (c) To adapt and put into good order all the parts of the vessel where goods are to be loaded.

11.1.02. Obligations of shippers

A shipper or his representative shall deliver the goods at the time and in the place agreed between the parties or indicated by the custom of the port of loading.

11.1.03. Obligations of masters

A master shall attend in an appropriate manner and with due care to the loading, handling, stowage, transport, safekeeping and unloading of the goods from the moment of their overside delivery.

Subject to the regulations concerning certain dangerous goods, a master shall be deemed at fault if he stows goods on the vessel's deck without the shipper's written consent. Such consent shall be deemed to have been given in the case of loading in containers on suitable vessels.

A master shall take normal care of goods in accordance with the agreement between the parties or the custom of the port of loading.

11.1.04. Interruption of voyages

When a voyage is interrupted, the carrier or his representative shall, under pain of damages, take care to arrange for the goods to be transhipped and transported to the scheduled port of destination.

A carrier shall be bound by this obligation regardless of the cause of the interruption of the voyage.

11.1.05. Payment of freight

A shipper shall pay the cost of transport or freight. In the case of carriage forward payable at destination, the consignee shall also be liable to pay if he accepts delivery of the goods.

11.1.06. Amount of freight

The amount of the freight shall be established in the agreement between the parties.

11.1.07. Goods not presented for loading

A shipper who fails to present his goods at the right time and in the right place in accordance with article 11.1.02 above shall pay compensation of one half of the agreed freight. In the case of partial failure, he shall pay half the freight attaching to the quantity of goods not shipped.

11.1.08. Goods withdrawn during a voyage

A shipper who withdraws his goods during a voyage shall be liable to pay the entire freight and all the costs connected with unloading the goods, except when the withdrawal is motivated by an act of the master, subject to the provisions of article 11.2.15, subparagraph (a).

11.1.09. Dangerous goods

Inflammable materials, explosives or other dangerous goods which a carrier or his representative would not have agreed to take on board if he had been aware of their nature may be unloaded, destroyed or rendered harmless by the carrier at any time and in any place without compensation; the shipper shall moreover be held liable for any damage or costs which may result from the loading of such goods.

When a carrier is aware of the nature of such goods but nevertheless agrees to take them on board, he may not unload or destroy them or render them harmless unless they would imperil the vessel or its cargo; no compensation shall be due except, when appropriate, under general average.

11.1.10. Jettisoned goods

A carrier shall be paid the freight for goods jettisoned for the safety of all, on condition of contribution.

11.1.11. Freight not payable in the event of negligence by carriers

No freight shall be payable in respect of goods lost or damaged as a result of failure by a carrier to fulfil his obligations under articles 11.1.01 and 11.1.03 above. The same shall apply in the case of goods lost or damaged owing to perils of the sea, unless the parties agree otherwise.

11.1.12. Transshipment costs and freight due

In the event of transshipment to another vessel pursuant to article 11.1.04 above, the transshipment costs and the freight due for completion of the carriage of the goods shall be paid by the carrier when responsibility for the interruption of the voyage is attributable to him and is not covered by the provisions of article 11.2.15.

In other cases these same costs shall be applied to the goods.

In either eventuality, the carrier shall retain the freight agreed for the entire voyage.

11.1.13. Liability for losses and damage during transshipment

When a voyage is interrupted and the goods cannot be usefully transhipped, the carrier shall be liable for their loss or damage in accordance with the provisions of the following chapters.

He shall be entitled to be paid his freight in proportion to the distance sailed.

11.1.14. Failure to pay freight

A master may not retain goods on his vessel for failure to pay freight.

At the time of unloading he may request that the goods be placed in third hands until he receives his freight.

11.1.15. Preferential claim on goods for payment of freight

A carrier who has not been paid his freight shall have a preferential claim on the goods he has carried for 15 days after their delivery if they have not been placed in third hands.

11.1.16. Preferential ranking with respect to payment of freight and for damage

When a shipper or consignee becomes bankrupt before the 15-day time limit has expired, the carrier shall have precedence over all other creditors for the payment of his freight and for damage.

11.1.17. Delivery of goods

A master or a shipping agent shall deliver the goods to the consignee or his representative designated in the dispatch document.

If the dispatch document is a bill of lading, the consignee is either the person named in a straight bill of lading, or the person who presents the bill of lading on the vessel's arrival in the case of a blank bill of lading, or the last endorser of an order bill of lading.

11.1.18. Return of bills of lading

The return of an original copy of a bill of lading to the carrier or his representative confirms the delivery, unless the consignee proves otherwise.

The same shall apply to a consignee's receipt affixed to a dispatch document.

11.1.19. Release of carriers

A forwarding agent represents the consignees.

Delivery of the goods into his hands releases the carrier in the same way as he is released by delivery into the hands of consignees.

11.1.20. Remedies in the event of refusal to receive goods

When goods are not claimed or when a consignee refuses to take delivery, a master may by court order:

- (a) Have them sold for payment of his freight;
- (b) Have the surplus goods placed in a public warehouse or in third hands.

When sale produces insufficient funds, a carrier shall retain his right to sue the shipper for payment of the freight.

11.1.21. Liability for damage caused by goods

A shipper shall be liable for damage caused to a vessel or to other goods by the goods which he has had transported. It shall be for the person seeking damages to establish the fault of the shipper or of persons for whom he is responsible.

11.1.22. Start and end of maritime transport contracts

Unless agreed otherwise, a maritime transport contract shall include the operations preceding loading from the acceptance of the goods by the shipper, transport by the vessel, and the operations following unloading of the goods until they are delivered to the consignees.

The rules of maritime law shall apply to all these operations.

11.1.23. Mixed river and maritime transport

When goods are covered by a mixed river and maritime transport contract, the rules of maritime law shall apply to the maritime part of the transport in accordance with article 11.1.01.

When the cause of damage or loss suffered by goods remains unknown in the above-mentioned case, the rules of maritime law alone shall apply.

11.1.24. Inadmissibility of actions in absence of prior protest

Subject to the special provisions concerning transport under a bill of lading, the following actions shall be inadmissible:

- All actions against a maritime carrier or a master in respect of damage or loss suffered by goods when delivery of the goods was accepted without protest;
- All actions against a charterer or subletter in respect of damage when the master delivered the goods and collected the freight without protest.

Protests in such cases shall be made in writing within 24 hours, under pain of nullification.

11.1.25. Statute of limitations

Any action concerning delivery of goods or for damages in respect of loss or damage during transport must be brought within one year of the vessel's arrival or of the vessel's total loss.

The time limit for bringing an indemnity action shall be one month counted from the time when the warranty proceedings are instituted.

Chapter 2

Transport under bills of lading

11.2.01. Definition of on board bill of lading

A contract of transport under bill of lading is a contract for the transport by sea of any goods stated in a bill of lading known as an "on board bill of lading".

This bill of lading is a written document issued by a carrier or his representative which certifies that the goods have been loaded and represents them.

11.2.02. Other non-equivalent documents

The rules contained in this chapter shall not apply to "received for shipment" bills of lading or to the collective bills of lading referred to in article 11.4.04 or to the bills of lading required by some States for purely administrative or fiscal purposes.

These various documents do not represent the goods.

11.2.03. Signatories of contracts

A contract may be concluded between a shipper or his representative and a carrier or his representative in any form whatsoever.

11.2.04. Obligations of parties to contracts

Under such a contract a shipper undertakes to pay a certain freight and a carrier undertakes to transport a specific cargo from one port to another.

The parties shall be free to nominate the vessel to be loaded or to leave the choice to the carrier.

11.2.05. Termination in cases of *force majeure*

A contract shall be terminated when the departure of the vessel which was to transport the goods is prevented or delayed by *force majeure*.

In such cases, the contract shall be terminated without damages on either side, and the costs of loading and unloading the goods shall be governed by the provisions of article 9.7.10, paragraph 2.

11.2.06. Termination by fault of carriers

When the same problem results from fault of a carrier, the contract may be terminated at the shipper's request. The shipper shall be entitled to damages corresponding to the harm suffered. The amount shall be determined in accordance with the provisions of articles 11.2.16 and 11.2.19 above.

11.2.07. Content and form of contracts

When the goods have been taken on board, the carrier or his representative shall, at the shipper's request, furnish him with a bill of lading containing particulars identifying the parties and the goods to be transported and specifying the voyage to be made and the freight to be paid.

This document may be an order, blank or straight bill of lading.

11.2.08. Information relating to goods

A bill of lading shall indicate inter alia:

- (a) The principal identification marks on the goods, as supplied by the shipper before the loading of the goods has started; the marks shall be sufficient for identification of the goods and shall be affixed in such a way that they will normally remain legible until the end of the voyage;
- (b) Where appropriate, the number of packages and objects or the quantity or weight of the goods, as supplied in writing by the shipper;
- (c) The apparent condition and packaging of the goods.

11.2.09. Challenge of statements made by shippers

A carrier or his representative may refuse to enter in the bill of lading statements by a shipper as to the marking, number, quantity, condition or weight of goods when he has serious grounds to doubt their accuracy or has not had the normal means of checking them.

But in that case he shall make a specific mention of these grounds or lack of means. Proof of missing goods shall then rest with the shipper or the consignee.

11.2.10. Value of bills of lading as evidence

In the absence of any challenges under the preceding article, a bill of lading shall constitute proof of the statements made in it concerning the quantity and the apparent condition of the goods.

This proof shall be absolute with respect to third parties bearing the bill of lading. A carrier may offer contrary proof against a shipper by all available means.

11.2.11. Arrangements relating to inaccuracy of statements

Any letters or agreements by which a shipper undertakes to indemnify a carrier when the carrier or his representative consents to issue a clean bill of lading in the knowledge that he might reasonably doubt the accuracy of the statements made therein shall be void and without effect. But third parties may invoke such letters or agreements against the shipper.

Each bill of lading shall be drawn up in at least two original copies, one for the shipper, the other for the master.

The originals shall be signed by the carrier or his representative and by the shipper within the 24 hours following loading and at the latest before the vessel sails.

11.2.13. Agreement of statements on the two originals

If the several copies of a bill of lading disagree, each party may invoke the particulars contained in the copy which he holds only when these particulars appear also in the copy in the hands of the other party.

11.2.14. Start and end of contracts

A carrier shall be liable for all losses or damage suffered by goods from the time when they are loaded until they are unloaded, subject to the exceptions specified in the following article.

When goods are loaded by means of lifting equipment, the said liability shall start at the moment when the slings supporting the goods presented on the quayside or on lighters are made fast to the hook of the hoist.

When goods are unloaded by the same means, the said liability shall end at the moment when the slings are released and the goods are resting on the ground or on lighters.

These provisions shall also apply when the lifting equipment belongs to the cargo vessel and when it is operated by a stevedore on land or afloat.

When goods are manhandled, the said liability shall start at the time of loading when the slings leave the ground or the lighter and it shall end at the time of unloading when the slings make contact with the ground or the lighter.

In the case of bulk transport of liquids or gas, the liability of a maritime carrier shall start on departure when the liquid or the gas has reached the vessel's conduits and pipes and it shall end on arrival when the liquid or gas has left these conduits and pipes.

However, the parties may agree to set the limit of liability at the moment when the liquid or gas passes through a device for measuring cubic volume.

11.2.15. Cases excluding liability of carriers

A carrier shall be released from liability under the preceding article if he proves that the losses or damage suffered by the goods resulted from:

- (a) Faulty seamanship on the part of the master or other shipboard employees of the carrier;
- (b) Hidden defects in the vessel not detectable by reasonable inspection;
- (c) Events constituting an accident or *force majeure*;
- (d) Strikes or lockouts or other partial or total work stoppages or hold-ups, whatever their cause;
- (e) An inherent defect in the goods or delayed delivery within the customary tolerances in the port of destination;
- (f) Negligence on the part of the shipper, in particular in the wrapping, packaging or marking of the goods;
- (g) Salvage or attempted salvage of lives or goods at sea, or diversion of the vessel for such purpose;
- (h) Unseaworthiness of the vessel when the carrier proves that he has exercised reasonable diligence in fulfilling his obligations under article 11.1.01;
- (i) A fire, unless caused by an act or negligence of the carrier or his employees.

However, with regard to any of these exceptions the shipper shall have to prove that responsibility for the losses or damage is attributable either to the carrier personally or to his employees, except in the case of faulty seamanship mentioned in subparagraph (a) above.

11.2.16. Limitation of liability of carriers

Unless the nature and value of the goods has been declared by the shipper before they are loaded on board and such declaration has been entered in the bill of lading, a carrier shall be held liable in the sum of 666.67 SDRs per package or unit or 2 SDRs per kilo of gross weight of the goods lost or damaged, the higher limit being applicable. However, the carrier and the shipper may agree on a higher amount.

When a container, a pallet or a similar device is used for groupage of goods, any package or unit listed in the bill of lading as being stowed in the container, on the pallet or in or on a similar device shall be treated as a package or unit for the purposes of this article. In other cases, the container, pallet or other device shall be deemed to be a package or unit.

11.2.17. Loss of the benefit of limitation

A carrier may not invoke the benefit of limitation of his liability provided for in the preceding article:

- (a) When it is proved that the damage resulted from his own personal act or omission committed recklessly and in the knowledge that such damage would probably result;
- (b) When a shipper's declaration of value has been entered in the bill of lading and accepted by the carrier; such declarations shall be deemed accepted as true by the carrier unless he proves otherwise.

11.2.18. Challenges to declarations of value

If a carrier challenges the accuracy of a declaration of value at the time when it is made by a shipper, he may so endorse the bill of lading, adding the grounds for his challenge; the burden of proving the true value shall then rest with the shipper or the consignee.

11.2.19. Nullity of certain clauses

A clause shall be null and without effect when its direct or indirect purpose is to:

- (a) Release a carrier from the liability defined in article 11.2.14; or
- (b) Reverse the burden of proof as stipulated in this Code; or
- (c) Limit a carrier's liability to a sum lower than the one established pursuant to article 11.2.16.

11.2.20. Waivers of the preceding article

By waiver of the preceding article, liability or compensation clauses shall be permitted in the cases of transport of live animals and transport of goods loaded on deck.

11.2.21. Release from liability in the event of fraudulent statements as to the nature or value of goods

When a shipper has knowingly made an inaccurate declaration of the nature or value of his goods, the carrier shall not incur any liability for losses or damage.

11.2.22. Damage assessment

It shall be for the applicant to establish the nature and degree of the damage for which he is seeking compensation.

11.2.23. Protest and endorsement at time of delivery

When goods are lost or damaged, the consignee or his representative shall address a written protest to the carrier or his representative in the port of discharge, at the time of acceptance of delivery at the latest; the goods shall otherwise be deemed, subject to proof to the contrary, to have been received by the consignee as described in the bill of lading.

In the case of non-apparent losses or damage, such a protest may be validly entered within three days of delivery, not counting public holidays.

A carrier shall always be entitled to request an endorsement as to the condition of the goods at the time of delivery.

11.2.24. Statute of limitations

The time limit for bringing an action against a carrier in respect of losses or damage shall be, in the case of total loss, one year from the day on which the goods should have been delivered, and in other cases one year from the day on which they were delivered or offered to the consignee or his representative.

The time limit for bringing an indemnification action shall be one month from the day when warranty proceedings are instituted.

11.2.25. Scope of exemptions and limitations

The exemptions and limitations provided for in this chapter shall be applicable to any action against a carrier seeking compensation for losses or damage suffered by goods covered by a contract of transport, regardless of whether the action is based on contractual liability or on non-contractual liability.

11.2.26. Binding nature of the present chapter

The provisions of the present chapter constitute a requirement of public policy in Madagascar and shall apply to all transport of goods under bills of lading from or to a Malagasy port which does not fall within the scope of an international convention to which Madagascar is a party.

The Malagasy courts may declare null and void any jurisdiction or arbitration clause having the purpose or effect of circumventing the application of these provisions or of equivalent legislation.

Chapter 3 **Transport under charter parties**

11.3.01. Conclusion of contracts

A contract of transport under charter party is constituted by the chartering or subletting of a vessel or part of a vessel.

The shipper and the carrier are free to establish by agreement the scope of their respective obligations and contractual liability.

11.3.02. Invalid innovations and amendments in bills of lading

When, in connection with transport under charter party, a bill of lading or equivalent document has been issued in order to certify the loading of goods, it shall be assumed that none of the statements made in this document entails a new obligation or an amendment of an existing obligation arising under the charter party with respect to its signatories.

However, a third party bearing an on board bill of lading issued in these circumstances may invoke the provisions of the preceding chapter concerning the transport of goods under bills of lading against an owner, charterer or subletter.

11.3.03. Duty to comply with the provisions of charter parties

When a sublet contract or a bill of lading is endorsed "charter party terms", the beneficiary of such a transport document shall be required to comply with the provisions and terms of the charter party referred to in the contract if the charter party was made public in accordance with article 9.4.04, or if it conforms with a model charter party in normal use, or if the carrier has informed the beneficiary of the terms which concern him.

11.3.04. Failure to comply with the terms of charter parties

Unless specifically agreed otherwise by the parties, the following rules shall be observed:

1. When an entire vessel is hired and the charterer does not provide a full cargo, the master may not take on board other goods without the charterer's consent. The charterer shall receive freight for any goods taken on board to supplement the cargo;
2. An owner who has over-declared a vessel's cargo capacity may be liable to the charterer for damages, except when the over-declaration does not exceed one fortieth or when the declaration is consistent with the tonnage certificate;
3. When the freight is proportional to the quantity of goods loaded, the charterer shall load the weight or the quantity specified in the charter party. He shall otherwise have to pay the compensation provided for in article 11.1.07.

When the quantity to be loaded is endorsed "approximately" in a charter party, the charterer shall fulfil his obligation by offering a cargo one tenth below or above the specified quantity;

4. When the freight is an all-inclusive lump sum and the charterer loads a greater quantity than specified in the contract, he shall pay the freight for the excess at the price set in the charter party;
5. A master may put ashore in the place of loading any goods loaded on board his vessel without having been declared to him or he may demand before sailing freight at the highest rate for goods of the same kind.

Chapter 4
Other transport of goods by sea

11.4.01. Small vessels

The issuance of a bill of lading for transport of goods shall be optional when they are loaded on a motor-powered vessel having a tonnage of under 10 tons or on a vessel without a motor having a tonnage of under 25 tons.

11.4.02. Coastal and limited coastal navigation

In the cases of coastal and limited coastal navigation between Malagasy ports, proof of contract may be established in accordance with the general rules of commercial law, without any need to draw up a charter party or a bill of lading.

The acceptance of the goods may be certified by a dispatch note, or by a consignment note, or by a shipping note issued by a master.

11.4.03. Provisions applying to the two preceding cases

In the cases mentioned in the two preceding articles, the respective obligations of the parties shall be established in accordance with the provisions of chapter 1 of this Title and the normal usage of the port of lading, unless agreed otherwise.

11.4.04. Provisions applying to combined bills of lading

When, in those same cases, a combined bill of lading is issued by a carrier or a master to a forwarding agent in respect of a combination of shipments, this bill of lading does not represent the goods. But the parties may declare that the provisions of chapter 2 of this Title shall apply wholly or in part to such a combination of shipments.

11.4.05. Special regulations for consignments of mail

The maritime transport of consignments of mail shall not be governed by the provisions of this Title. It shall be subject to the relevant special laws and regulations.

Title B
Transport of passengers

Chapter 5
Travel contracts

Section A. General rules

11.5.01. Scope

The provisions of this chapter shall not apply to transport volunteered on a non-commercial basis or to stowaways, but they shall apply to commercial transport free of charge by a maritime transport enterprise.

They shall not apply to warships or to government vessels used exclusively for a public service other than the transport of passengers.

11.5.02. Definition of travel contracts

Under a travel contract a shipowner undertakes to transport passengers by sea for a specified voyage against payment of a fare.

11.5.03. Travel tickets

A carrier shall issue to a passenger a travel ticket showing particulars identifying the parties to the contract (carrier and passenger) and the voyage covered by the ticket (name of vessel, place and date of embarkation, port of disembarkation and, where appropriate, the scheduled ports of call).

On vessels having a gross tonnage of under 10 tons and on boats providing port services or regular services within zones delimited by the maritime authority, this ticket shall be replaced by a ticket showing the name of the carrier and the service provided.

11.5.04. Assignment to third parties

A passenger may not assign the benefit of his travel contract to a third party without the carrier's consent.

11.5.05. Public-policy provisions

The provisions of this chapter may not be modified to the detriment of the passenger.

Section B. Obligations of passengers

11.5.06. Obligation to be present for embarkation

A passenger shall be present for embarkation in accordance with the conditions mentioned on the travel ticket.

If he arrives too late, he shall remain liable for the fare.

11.5.07. Death of passengers or other circumstances preventing embarkation

When a passenger is prevented from embarking by *force majeure*, the contract shall be cancelled by a notification to this effect given by the passenger or his representatives before embarkation.

In the event of a passenger's death, the contract may also be cancelled after the scheduled date of embarkation, if the delay is justified. However, such delay may not exceed six months.

The same terms shall apply, at their request, to members of the family of a passenger who has died or has been otherwise prevented from embarking who were to have travelled with him.

11.5.08. Interruptions of voyages attributable to passengers

Once a voyage has begun, any incident affecting a passenger's person shall not affect his debt.

11.5.09. Cancellation of sailing

When a vessel does not sail owing to a cause not attributable to the carrier, the contract shall be cancelled without compensation on either side.

A carrier shall be liable to pay compensation equal to one half of the fare unless he can establish that the cause is not attributable to him.

11.5.10. Major changes in a voyage

If any major change is made in the scheduled timetable, itinerary or ports of call, a passenger shall be entitled to request cancellation of the contract and damages where appropriate.

11.5.11. Failure to complete a voyage

Failure to complete a voyage when the carrier does not establish that the cause is not attributable to him shall entail the cancellation of the contract, without prejudice to damages where appropriate, unless the carrier provides the passenger with transport to his destination on a vessel of the same class.

11.5.12. Residual nature of articles 11.5.05 to 11.5.10

By express agreement the parties may set aside all or some of the provisions of articles 11.5.05 to 11.5.10 above.

11.5.13. Shipboard discipline

Passengers shall be subject to shipboard discipline.

Section C. Liability of carriers

11.5.14. Duty to ensure passengers' safety

A carrier shall be required to put and maintain his vessel in a seaworthy state, suitably fitted out, equipped and provisioned for the voyage in view and to take every care to ensure the passengers' safety,

11.5.15. Liability in the event of collective accidents

A carrier shall be held liable for the death or injury of passengers caused by shipwreck, collision, stranding, explosion, fire or any other major casualty, unless he can prove that the accident is not attributable to him.

11.5.16. Liability in the event of individual accidents

If a passenger is killed or injured as a result of an accident occurring after he embarks and before he goes ashore in a port of call or in the port of destination, a carrier shall be required to pay compensation for the detrimental consequences when it is established that he failed to perform the duty prescribed by article 11.5.14.

11.5.17. Limitation of liability

In the case of claims arising from the death or bodily injury of a vessel's passengers from one and the same incident, the liability of the vessel's owner shall be limited to 46,666 SDRs multiplied by the number of passengers that the vessel is authorized to carry according to the ship's passport, up to a limit of 25,000,000 SDRs.

For the purposes of this article, "passenger" means any person transported under a passenger travel contract or any other person who, with the carrier's consent, is accompanying a vehicle or live animals covered by a contract for transport of goods.

11.5.18. Liability in the event of delays

A carrier shall be liable for harm caused by delay due to a failure to comply with article 11.5.14 or to commercial negligence by his employees.

11.5.19. Statute of limitations

Indemnity actions against a carrier must be brought within two years from the day on which the passenger disembarked or should have disembarked.

Chapter 6

Transport of baggage

11.6.01. Personal effects and unregistered cabin baggage

A carrier shall be liable for personal effects and unregistered cabin baggage when it is established that the loss or damage is due to his fault or fault of his employees.

Except in the case of fraud or inexcusable negligence on his part, the compensation payable by a carrier shall not exceed 400 SDRs per passenger.

11.6.02. Valuables deposited for safekeeping

There shall be no limitation of liability in respect of valuables placed by a passenger for safekeeping in the hands of a master or purser.

11.6.03. Registered baggage and tourism vehicles

A carrier shall issue receipts for registered baggage and tourism vehicles. He shall be liable for them up to the following limits:

- 950 SDRs per passenger for cabin baggage;
- 1,250 SDRs per passenger for hold baggage;
- 3,850 SDRs per tourism vehicle, including baggage inside the vehicle.

11.6.04. Non-payment of freight

A master may not retain baggage on board but he may have it deposited in third hands pending full payment of sums due under a travel contract.

Such debts shall have preferential ranking among claims to the proceeds of the sale of baggage.

11.6.05. Statute of limitations

Actions arising from the transport of baggage must be brought within a time limit of one year.

Chapter 7

Cruise contracts

11.7.01. Cruise tickets

A travel agency which organizes sea cruises shall issue to each passenger a cruise ticket, under pain of nullification of the contract.

This ticket shall mention the following particulars:

1. The vessel's name and class;
2. The travel agency's name and address;
3. The passenger's name and address;
4. The class and inclusive price of the cruise;
5. The ports of departure and destination;
6. The dates of departure and arrival;
7. The scheduled ports of call;
8. The additional services promised to the passenger.

11.7.02. Cruise booklets

Each passenger shall receive, in addition to the cruise ticket constituting his travel contract, the corresponding vouchers for each port of call in respect of services to be provided on shore, attached together in a cruise booklet.

The cruise ticket and the cruise booklet shall constitute the cruise document.

11.7.03. Failure to fulfil obligations

Failure to fulfil any of the obligations stated in a cruise document shall trigger an agency's liability, unless it can prove that the failure was due to an event beyond its control.

11.7.04. Personal liability of agencies

An agency shall be personally liable for harm suffered by passengers or their baggage subject to the terms and limits set out in articles 11.5.14 to 11.6.02 above, and without prejudice to any remedy that it may exercise against the carrier.

Title C

Maritime sales

Chapter 8

Common provisions

11.8.01. Definition

A maritime sale is the sale of goods to be transported by sea for delivery to a buyer.

Maritime sales are governed by the general law applicable to contracts of sale and by the provisions of this Title, which are merely residual to the wishes of the parties, unless the law provides otherwise.

Chapter 9
Sales on departure

11.9.01. Definition

Sale on departure, known as “free on board” (FOB) places the transport and its risks in the hands of the buyer.

11.9.02. Obligations of sellers

The following are the seller’s obligations:

1. To deliver the goods in accordance with the terms of the contract;
2. To deliver the goods to the agreed port of loading, in accordance with that port’s normal practice, on the date or by the time limit agreed:
 - Either on board a vessel named by the buyer (FOB clause);
 - Or to the quayside, as close as possible to the named vessel (free alongside ship or FAS clause), then to notify the buyer within 24 hours by the usual means;
3. To cover all the costs charged against the goods and all the risks to which they may be exposed up to the time when they actually pass the vessel’s rail (FOB clause) or are actually deposited on the quayside (FAS clause) on departure, including the costs of all the necessary formalities up to those points;
4. To provide at his own expense for the normal packaging of the goods, unless it is usual in the trade to dispatch the goods without packaging;
5. To pay the costs of verifying condition or weight or of the measuring or counting necessary for sale on departure;
6. To provide at his own expense a delivered-clean document certifying the delivery of the goods either on board or alongside the named vessel.

11.9.03. Obligations of buyers

The following are the buyer’s obligations:

1. To notify the seller in good time of the name of the vessel, the place of loading and the date of delivery to the vessel. To this end, to charter a vessel or reserve the necessary space on a vessel at his own expense;
2. To cover all the costs chargeable to the goods and all the risks to which they may be exposed from the time when they actually pass the vessel’s rail (FOB clause) or are actually deposited alongside the vessel (FAS clause) on departure, and to pay the contracted price;
3. When the vessel named by the buyer is unable to load the goods on the date or by the time limit agreed, to cover all the additional costs thus incurred and all the risks to which the goods may be exposed from the date of the expiry of the agreed time limit, provided that the goods are segregated into batches;
4. To cover the same costs and risks, on the same terms, when he does not designate a vessel or the port of loading in good time;
5. To meet the issuance fees and the costs of all documents such as bills of lading, certificates of origin, consular fees, and insurance policies.

Chapter 10
CIF sales

11.10.01. Definition

Under a cost, insurance and freight (CIF) sale a buyer covers the price of the goods, the marine insurance premium, the freight, and the transport risks.

11.10.02. Obligations of sellers

The following are the seller’s obligations:

1. To deliver the goods in accordance with the contract of sale;
2. To conclude at his own expense a contract for the transport of the goods to the agreed port of destination on a suitable seagoing vessel and to pay the freight;
3. To load the goods at his own expense on board the vessel in the port of loading within the agreed time limit or, in the absence of any stipulation on this point, within a reasonable time limit, and to notify the buyer within 24 hours by the usual means;
4. To provide at his own expense and in transmissible form a marine insurance policy issued by an insurance company of good reputation and covering all the transport risks mentioned in the contract;
5. To bear all the risks to which the goods may be exposed up to the moment when they actually pass the vessel's rail on departure;
6. To furnish to the buyer at his own expense and without delay:
 - A clean on board bill of lading, negotiable to order, for the agreed port of delivery;
 - An invoice for the goods dispatched;
 - The marine insurance policy;
 - A copy of the charter party if the bill of lading mentions one;
7. To provide at his own expense for the normal packaging of the goods, unless it is the custom in the trade to dispatch the goods without packaging;
8. To meet the costs of verifying condition or weight or of the measuring or counting necessary for delivery on departure;
9. To pay all the duties and fees chargeable against the goods up to the time of loading, including the costs of any export formalities and duties.

11.10.03. Obligations of buyers

The following are the buyer's obligations:

1. To accept the documents when presented by the seller if they are in conformity with the terms of the contract of sale and to pay the contracted price;
2. To cover all the risks to which the goods may be exposed from the time when they actually pass the vessel's rail in the port of loading;
3. To meet all the costs chargeable against the goods during maritime transport, except for freight and marine insurance, and the costs of unloading on arrival;
4. To obtain and furnish at his own expense and risk an import licence or any equivalent document necessary for discharging the goods, and to pay the customs and import duties;
5. To pay the issuance fees and the costs of certificates of origin, health certificates and consular documents required for imports.

11.10.04. Maintenance of obligations under article 11.10.03, paragraph 2

The inclusion in a contract of clauses such as "weight agreed on arrival" or "agreed in port of arrival" shall not alter the nature of a CIF sale when the purpose or effect of such clauses is not to commit the seller to covering the risks referred to in article 11.10.03, paragraph 2.

Chapter 11 **Sales on arrival**

11.11.01. Definition

Under a sale on arrival agreement the seller covers the transport and its risks.

Delivery takes place in the port of arrival, either on the quay alongside the vessel or on board the cargo vessel, as agreed by the parties.

In the case of bulk goods, delivery is not deemed to be made until the buyer's batch has been segregated. Approval takes place at the time of delivery or segregation.

11.11.02. Obligations of sellers

A seller shall pay all the costs, duties and fees connected with leaving the port of loading, as well as the loading and transport costs.

He shall also pay the costs of unloading in the port of arrival when the goods are to be delivered on quay.

11.11.03. Obligations of buyers

A buyer shall pay the costs, duties and fees connected with entering the port of unloading. He shall also pay the unloading costs when the goods are delivered free at rail.

He shall pay the contracted price subject to the conditions set out below.

11.11.04. "On loading" sales

In the case of an "on loading" sale, the seller must load the goods within the time limit agreed in the contract on a vessel of his choice.

When loss or damage occurs during transport, in the case of bulk goods the seller shall re-dispatch to the buyer the equivalent of the missing quantities at the price and under the terms of the contract.

11.11.05. "On nominated vessel" sales

In the case of a sale "on nominated vessel" or "on vessel to be nominated", in addition to fulfilling the obligations set out in article 11.11.02, the seller shall nominate immediately, or within a specified time limit, the vessel on which the goods have been or are to be loaded.

A seller's obligations shall be subject to the safe arrival of the goods at their destination.

Total or partial loss or damage during a voyage shall entail the cancellation of the sale, up to the appropriate limit, without obligation to replace for the seller and without damages for the buyer.

A buyer shall bear the consequences when the nominated vessel is delayed.

**BOOK 12.
MARINE INSURANCE**

Chapter 1
General rules

12.1.01. Parties to contracts

Marine insurance indemnifies owners, charterers and shippers against the risks of a sea voyage.

12.1.02. Insured interests

Any legitimate interest, including expected profits, exposed to maritime risks may be insured.

12.1.03. Residual nature of legal provisions

The provisions of this Book may be set aside by the parties to a contract, unless the law provides otherwise.

12.1.04. Application to re-insurance

The provisions of this Book shall apply to re-insurance.

12.1.05. Indemnification in the event of loss

Notwithstanding a clause to the contrary, a policy may be no more than a contract of indemnification.

No one may claim compensation under an insurance policy unless he has suffered a loss.

12.1.06. Beneficiaries of insurance policies

An insurance policy may be taken out either in the interest of the signatory, or in the interest of some other specified person, or with an open or order clause.

Policies containing an open or bearer clause shall be valid both as insurance in the interest of the signatory of the policy and as a stipulation to others in the interest of an eventual beneficiary of the clause in question.

Title A

Common rules for different types of insurance

Chapter 2

Conclusion of contracts

12.2.01. Constitution in written form

Notwithstanding any stipulation to the contrary, an insurance contract shall be constituted in writing.

12.2.02. Authentication in a policy or other document

A contract of insurance may take the form of a legally certified policy or a private agreement.

Before a policy or an endorsement is drawn up, the commitment of the parties may be certified by some other means (binders, cover notes).

12.2.03. Particulars to be shown in policies

An insurance policy shall be dated on the day of its signature. It shall state:

- The place of signature;
- The names and domiciles of the contracting parties, with an indication, when necessary, that the person taking out the policy is acting on behalf of another person;
- The subject-matter or the interest insured;
- The risks insured or excluded;
- The time and place of these risks;
- The sum insured;
- The premium;
- The order or bearer clause, if any has been agreed;
- And, in general, all the other terms agreed between the parties.

12.2.04. Non-commencement of risks

An insurance policy shall be void when the risks have not commenced within two months of the conclusion of the policy or of the date set for the risks to commence.

In the case of open-cover policies, this provision shall apply only to the first declaration of shipment.

12.2.05. Inaccurate statements or omissions

Any inaccurate statement made by the insured which is likely substantially to reduce the insurer's assessment of a risk shall render the insurance void, even when there is no intention to defraud.

Any omission by the insured committed in bad faith which has likewise reduced the insurer's assessment of a risk shall also render the insurance void.

An insurance shall be rendered void even when the inaccurate statement or the omission has had no influence on the damage or loss of the subject-matter insured.

An insurer shall retain the premium when there has been intention to defraud on the part of the insured.

12.2.06. Aggravation of insured risks

Any aggravation of a risk occurring during the period of a contract shall entail the cancellation of the insurance when such aggravation is not declared to the insurer within three days from the time when the insured learned of it, not counting public holidays.

When the aggravation is not attributable to the insured, the insurance may be continued by payment of an additional premium to take account of the aggravation.

When the aggravation is attributable to the insured, the insurer may either cancel the contract immediately, retaining the premium, or demand an additional premium to take account of the aggravation.

12.2.07. Insurance after receipt of news

Any insurance taken out after the loss, damage or arrival of the insured objects shall be void when the news had reached the place of signature or the place of residence of the insured or the insurer before the contract was concluded.

12.2.08. Insurance following good or bad news

Insurance taken out after the receipt of good or bad news shall be void when it is established that, before the signature of the contract, the insured was personally aware of the loss or the insurer was personally aware of the arrival of the subject-matter insured.

12.2.09. Overlapping insurance policies

Overlapping insurance policies taken out with intention to defraud in a total amount higher than the insured value shall be void.

When taken out without intention to defraud, they shall be valid, provided that the insured brings them to the attention of the insurer from whom he is seeking settlement. Each such policy shall produce its effects in proportion to the amount to which it applies, up to a limit of the full value of the subject-matter insured.

12.2.10. Overvaluation of subject-matter insured

An insurance contract in an amount higher than the value of the subject-matter insured shall be void when the insurer establishes fraud, and he shall then retain the premium.

The same shall apply even when the insured value has been approved.

12.2.11. Validity in absence of fraud

In the absence of fraud, a contract shall be valid up to a limit of the value of the subject-matter insured and, if the value had been approved, for the total sum insured.

Chapter 3

Obligations of insurers and insured

12.3.01. Contributions to general average

An insurer shall be liable in respect of material damage caused to the subject-matter insured by any maritime peril or by an act of *force majeure*.

An insurer shall also be liable for:

1. The contribution of the subject-matter insured to general average except when it arises from a risk excluded by the insurance contract;
2. The costs incurred in connection with an insured risk in order to preserve the subject-matter insured against material damage or to limit such damage.

12.3.02. Negligence by the insured or his land-based employees

An insurer shall be liable in respect of material damage suffered by the subject-matter insured as a result of negligence by the insured or his land-based employees, unless he establishes that the damage is due to failure by the insured to take reasonable care to protect the subject-matter insured against the risks in question.

Notwithstanding any provision to the contrary, an insurer shall not be liable in the case of deliberate or serious negligence on the part of the insured.

12.3.03. Fault of master or crew

An insurer shall also be liable when damage is caused by fault of a master or crew, subject to the provisions of article 12.5.05.

12.3.04. "Free of average" clause

A "free of average" clause shall release an insurer from liability in respect of all average, either general or particular, except in cases giving rise to abandonment.

12.3.05. Forced changes of route or vessel

The insured risks shall remain covered even in the event of a forced change of route, itinerary or vessel or of any change decided upon by a master without consulting the owner or insurer.

12.3.06. Voluntary changes of route

In the event of a voluntary change of route or itinerary, an insurer shall remain liable in respect of casualties when it is proved that they occurred on the agreed part of the route.

12.3.07. Risks not covered

Unless agreed otherwise, an insurer shall not cover risks connected with:

- (a) Civil or foreign war;
- (b) Riots, popular movements, strikes, lockouts, or acts of sabotage or terrorism;
- (c) Damage caused by the subject-matter insured to other property or persons;
- (d) Atomic or nuclear activities.

12.3.08. Coverage of risks of war

When risks of civil or foreign war are covered, the insurer shall be liable in respect of all damage or losses of the subject-matter insured caused by:

- (a) Hostilities, reprisals, capture, arrest, coercion or interference committed by any Government or authority whatsoever, recognized or unrecognized, as well as by mines or any engine of war even when war has not been declared or has ended;
- (b) Acts of sabotage or terrorism, riots, popular movements, strikes or lockouts of a political nature or connected with a war.

12.3.09. Perils of the sea

When it is not possible to establish the cause of a casualty, it shall be deemed to have resulted from a peril of the sea.

12.3.10. Exclusion of coverage

An insurer shall not be liable in respect of:

- (a) Material damage and losses caused by an inherent defect of the subject-matter insured, subject to the provisions of article 12.5.05 concerning defects of vessels, or damage caused by worms or vermin;
- (b) Material damage and losses resulting from fines, confiscation, sequestration, requisition, or health or disinfectant measures, or from violation of blockades, smuggling, or prohibited or clandestine trade;

(c) Damages or other compensation in respect of any provisional arrest or any surety deposited to release arrested subject-matter;

(d) Harm directly affecting the subject-matter insured but not constituting material damage or loss, such as unemployment, delay, change of route, or impediments to the insured's business.

12.3.11. Obligations of the insured

The insured shall:

1. Pay premiums, fees and costs at the agreed time and place;
2. Exercise reasonable care in all matters pertaining to the vessel or the goods;
3. State accurately, at the time of conclusion of the contract, all the circumstances known to him likely to affect the insurer's assessment of a risk which he is underwriting;
4. Declare to the insurer, to the extent that he learns of them, any aggravation of risk occurring during the period of the contract.

12.3.12. Non-payment of premiums

When a premium has not been paid, the insurer may either suspend the insurance contract simply by a notice sent by registered letter or he may request the contract's cancellation.

12.3.13. Obligation to contribute to salvage

The insured shall contribute to the salvage of the insured items and take every possible measure to preserve his rights against liable third parties.

He shall be liable to the insurer for any loss resulting from a failure to fulfil this obligation.

Chapter 4

Settlement of compensation

12.4.01. Average settlement

Damage and losses shall be subject to average settlement, except when the insured is entitled to opt for abandonment in the cases specified by law or by agreement.

12.4.02. Repairs or replacement not mandatory

An insurer may not be compelled to repair or replace the subject-matter insured.

12.4.03. Reimbursement of contributions to general average

A contribution to general average, whether interim or final, shall be reimbursed by the insurer in proportion to the value insured by him, after deduction where appropriate of the particular average for which he is liable. Such reimbursement shall not exceed the amount of the contribution actually made.

12.4.04. Effects of abandonment

Abandonment may not be either partial or provisional. It transfers to the insurer the insured's rights to the subject-matter insured on condition that the insurer pays the full amount of the insurance compensation due, and the effects of this transfer shall come into force between the parties at the moment when the insured notifies the insurer of the abandonment.

12.4.05. Notification of abandonment

Abandonment shall be notified to the insurer by registered letter or by any other extra-judicial act.

Notification shall be given within three months of the receipt of news of the incident giving rise to the abandonment or of the expiry of the time limit for abandonment.

12.4.06. Declaration of any other insurance

When notifying abandonment, the insured shall declare all insurance policies which he has taken out or of which he has knowledge.

An insured who makes an inaccurate declaration in bad faith shall lose the benefit of the insurance.

12.4.07. Transfer of all the insured's rights

An insurer who has paid out insurance compensation shall acquire, up to the limit of such payment, all the rights of the insured arising from the damage which led to the compensation.

12.4.08. Statute of limitations

Actions arising from an insurance contract must be brought within a time limit of two years.

12.4.09. Commencement of time limit determined by nature of action

This time limit shall run:

1. With regard to actions seeking payment of a premium, from the date when the premium was due;
2. With regard to actions concerning damage: in respect of a vessel, from the date of the incident giving rise to the action; in respect of goods, from the date of the vessel's arrival or, failing that, from the date on which it should have arrived or, if the incident is subsequent, from the date of the incident;
3. With regard to abandonment actions, from the date of the event triggering entitlement to abandon or, when a time limit has been set for instituting proceedings, from the date of the expiry of that time limit;
4. When an insured party's action relates to a contribution to general average or to an assistance award, from the day of the payment made by him;
5. When an insured party's action relates to a remedy exercised by a third party, from the day on which that third party instituted legal proceedings against the insured or was indemnified by the insured.

Actions for restitution of any sum paid under a contract of insurance shall also be subject to a time limit of two years.

This time limit shall run from the date of the incorrect payment.

Title B

Special rules for different types of insurance

Chapter 5

Hull insurance

12.5.01. Duration of insurance

Insurance of vessels shall be contracted either for a voyage or for several consecutive voyages or for a specified time.

12.5.02. Beginning and end of voyage insurance

Under a voyage insurance contract, the insurance cover shall run from the commencement of loading or of ballasting until unloading or deballasting is completed or, at the latest, for 15 days after the vessel's arrival in the port of destination.

12.5.03. Discounting of days under time insurance

Under a time insurance contract, the risks of the first and last days shall be covered by the contract.

Days shall be counted from 0 to 24 hours according to the time of the place where the policy was issued.

12.5.04. Tacit renewal

A time insurance contract may be prolonged by tacit renewal, unless it is denounced by one of the parties before the expiry of its term.

12.5.05. Exclusion of cover

An insurer shall not be liable for damage or losses resulting either from an inherent defect of the vessel, except in the case of a hidden defect, or from a deliberate act of negligence by its master or crew.

12.5.06. Agreed value excluding any other valuation

When a vessel's insured value is an agreed value, the parties shall not allow each other any other valuation, subject to the provisions of article 12.2.10 and except when an action is brought in respect of a contribution to general average or of remuneration for assistance or salvage.

The insured value shall include on an undivided basis the vessel's hull and engines and all the installations and attachments owned by the insured, including provisions and deck stores.

Any separate insurance policy, regardless of its date, taken out on installations and attachments owned by the insured shall reduce the total approved value, in the event of total loss or abandonment, by the amount insured under such separate policy.

12.5.07. Guarantee of reimbursement of damages paid by the insured

Except in the case of harm to persons, an insurer shall be liable for reimbursement of damages of any kind which the insured has been required to pay as a result of actions brought by third parties when the insured vessel has collided with another vessel or has run into a mobile or floating fixed-hull establishment.

12.5.08. Entitlement to total premium under voyage insurance contracts

Under an insurance contract covering a voyage or several consecutive voyages, an insurer shall be entitled to payment of the total premium as soon as the risks have started to run.

12.5.09. Entitlement to partial premium under time insurance contracts

Under a time insurance contract, the premium specified for the entire duration of the cover shall be payable in the case of total loss or of abandonment to the insurer. Otherwise, the proportion of the premium payable shall be determined by the time elapsed up to the total loss or abandonment.

12.5.10. Reimbursement of costs in average settlements

In the case of average settlement, an insurer shall reimburse only the cost of replacements and repairs recognized as necessary for restoring the vessel to a good state of seaworthiness, to the exclusion of any other indemnity in respect of depreciation or unemployment or any other harm.

The cost of any such replacements shall be subject to a new-for-old deduction.

12.5.11. Abandonment

A vessel may be abandoned in the following cases:

1. Total destruction;
2. Destruction of up to three quarters of its value;
3. Impossibility of repair;
4. Provisional arrest for at least three months after notification of the insurer by the insured;
5. Lack of news for more than three months.

12.5.12. Continuation of insurance after sale or hire of vessels

When a vessel is sold or hired out, the insurance shall continue automatically in the interest of the new owner or hirer, provided that he notifies the change to the insurer within a time limit of 10 days and fulfils all the obligations of the insured towards the insurer under the contract.

However, the insurer may cancel the contract within one month of the day on which he receives notification of the sale or hire. Such cancellation shall not take effect until 15 days after it has been notified.

The vendor or the hirer shall remain liable for payment of premiums falling due before the sale or hire.

12.5.13. Cover in all places

The provisions of this Book shall apply to contracts of insurance relating to an insured vessel solely for the duration of its stay in a port, roadstead or other place, whether afloat or in dry dock.

Chapter 6

Insurance of goods

12.6.01. Types of policy

Goods may be insured either under a policy covering a single voyage or under a floating or open-cover policy.

Section A. Common provisions

12.6.02. Insurance within the limits of a voyage

Goods shall be covered without interruption wherever they may be located within the limits of the voyage specified in the policy.

12.6.03. Non-maritime parts of a voyage

When part of a voyage is accomplished by land, river or air transport, the rules of marine insurance shall apply to that part of the voyage.

12.6.04. Risks not covered

Whatever the risks covered, an insurer shall not be liable in respect of:

1. Loss of weight in transit;
2. Insufficient wrapping or poor packaging of goods;
3. Deliberate or serious negligence by the insured.

12.6.05. Limit of insured value

The insured value may not exceed the higher of the amounts determined: either by the purchase price or, failing that, by the current price at the place and time of loading plus all costs as far as destination and the expected profit; or by the value at destination on the date of arrival or, if the goods do not arrive, on the date on which they should have arrived; or, if the goods have been sold by the insured, by the selling price.

12.6.06. Degree of damage

The degree of damage shall be determined by comparison of the value of the goods in their damaged state with the value which they would have had in sound condition at the same time and place.

12.6.07. Franchises and deductibles

When the parties have agreed on a franchise or deductible, such franchise or deductible shall always be independent of the normal allowance for loss of weight in transit.

12.6.08. Abandonment

Goods may be abandoned when:

1. They have disappeared or have been totally destroyed;
2. They have been lost or damaged, up to a limit of three quarters of their value;
3. They have been sold by court order following damage arising from incidents covered by the insurance;
4. They have been under provisional arrest for more than three months, after notification of the insurer by the insured.

12.6.09. Other cases

Abandonment shall also be admissible:

1. When the vessel is not seaworthy and when the onward transport of the goods, regardless of the means employed, has not begun within a time limit of three months;
2. When there has been no news of the vessel for more than three months.

Section B. Special provisions on floating policies

12.6.10. Obligations of the parties

Under a floating policy the insured undertakes to declare to the insurer and the insurer agrees to underwrite subject to declaration:

1. All goods shipped on the insured's behalf or under a purchase or sale contract when the insured has an obligation to insure;
2. All goods shipped on behalf of third parties who have left it to the insured to attend to the insurance when the insured has an interest in the shipment as forwarding agent or consignee or in some other capacity.

The insured shall not be entitled to invoke the policy when his interest consists only in execution of an instruction to insure from a third party.

12.6.11. Start of cover

In the first of these two cases such shipments shall be covered automatically from the moment when they are exposed to the insured risks, provided that a declaration of shipment has been made to the insurer within the time limits specified in the contract; in the second case, from the time of such declaration.

12.6.12. Failure to declare

When the insured has deliberately omitted to fulfil the obligations set out in the preceding article, the contract shall be cancelled immediately at the request of the insurer, who shall be released from the obligation to pay compensation for casualties notified after the first failure to declare.

The insurer may furthermore recover payments made by him in respect of casualties occurring after the first failure to declare and request as compensation the payment of premiums for the omitted declarations.

12.6.13. Calculation of premiums

A premium shall be calculated on the basis of the total amount of declared shipments.

Chapter 7

Other insurance contracts

12.7.01. Freight up to 60 per cent

When an insurance policy is taken out on freight which is not payable in all eventualities, the freight shall be covered up to a limit of 60 per cent.

12.7.02. Risks insured

Freight insurance covers up to a limit of the sum insured only the contribution of the freight in question to general average and reimbursement thereof when a vessel is abandoned as a result of an insured risk, provided that the owner proves, in the cases specified in article 12.5.11, paragraphs 2, 3 and 4, that he was unable to transport the goods to their destination.

12.7.03. Assistance and salvage awards

Insurance against assistance and salvage awards covers, up to a limit of the insured amount, costs incurred in assisting or salvaging a vessel following occurrence of a covered risk, as well as any remuneration payable in connection with such risk.

This insurance shall come into play only when the sum insured under the vessel's policy is insufficient.

12.7.04. Special insurance contracts

The risks mentioned in articles 4.1.04 and 5.4.07 must be covered by a special insurance contract.

Part III
Maritime disputes

BOOK 13.
LEGAL PROCEEDINGS

Chapter 1
Material jurisdiction

13.1.01. Commercial operations

The following operations are deemed to be commercial operations:

- Any construction or repair operation and any purchase, sale or resale of a vessel or floating establishment used for river or maritime navigation;
- All purchases and sale of gear, tackle, attachments and stores for ships and boats;
- Any charter or hire of a vessel or floating establishment, regardless of its use;
- Any private towing or pilotage operation;
- Any transport of passengers or goods by river or sea;
- Any maritime fishing operation;
- Any maritime sale, regardless of the status of the parties;
- Any brokerage or forwarding operation relating to ships, boats or floating establishments or to their cargoes and passengers, or to the catches of maritime fishing;
- All maritime insurance contracts and loans;
- All agreements between owners and masters or shipboard agents concerning a vessel's commercial management.

13.1.02. Scope of maritime law and commercial law

The operations specified in article 13.1.01 shall be subject, as appropriate, to the provisions of this Code and, on a residual basis, to the general rules of commercial law.

13.1.03. Scope of private international law

When a foreign law is also recognized as applicable, the respective scope of the Malagasy and foreign legislation shall be determined in accordance with the provisions on conflict of laws contained in the general rules of private international law.

13.1.04. Offences subject to Malagasy law

Malagasy law shall apply only to disciplinary or criminal offences committed in Madagascar or in the territorial waters of Madagascar or on a Malagasy vessel. It shall apply, concurrently with the applicable foreign law:

1. To the offences covered by articles 507 to 510 of the Code of Criminal Procedure;
2. To the offences covered by article 8.2.18 of this Maritime Code.

13.1.05. Offences subject to the law of the flag State

However, offences committed in the territorial waters of Madagascar on board a foreign vessel which do not disturb the public order of Madagascar or harm Malagasy nationals or property may be subject to the law of the flag State.

13.2.05. Jurisdiction of commercial courts

The commercial courts shall be competent to hear:

1. Actions concerning liens, mortgages and other real sureties on vessels;
2. Actions concerning any of the commercial operations described in article 13.1.01;
3. Actions concerning the declaration and settlement of general average;
4. Actions arising from collisions;
5. Actions concerning remuneration for assistance or salvage at sea;
6. Proceedings concerning the provisional arrest of vessels;
7. Disputes between joint owners of a vessel concerning its operation.

13.2.06. Jurisdiction of labour courts

The labour courts shall be competent to hear disputes concerning articles of agreement, subject to the provisions of article 3.11.01 of this Code.

13.2.07. Jurisdiction of administrative courts

The administrative courts shall be competent to hear:

1. Actions claiming liability on the part of the Malagasy State or other public authorities with respect either to the activities of public services or to the infrastructure of ports, harbours and roadsteads, lighthouses, radio beacons, ordinary beacons and other maritime signs and signals;
2. Actions claiming liability on the part of the Malagasy State or other public authorities with respect to prejudicial acts committed by their agents or employees, subject to the exceptions specified in article 13.2.08;
3. Actions concerning exercise of the right of requisition and the right of seizure or embargo of foreign vessels or their cargoes;
4. Maritime arrests and actions concerning the exercise of the right to board vessels presumed to be enemy or pirate vessels.

13.2.08. Exceptions to the provisions of the preceding article

By waiver of the provisions of article 13.2.07, the criminal, civil and commercial courts alone shall be competent to hear actions seeking compensation for damage of any kind caused by a vessel, boat or any other floating establishment having the character of a maritime or river craft even if it is used exclusively for a public service.

The commercial courts shall have jurisdiction with regard to the Malagasy State or foreign States and to other public authorities to hear actions concerning the commercial operations referred to in article 13.1.01 carried out under private law and not relating to a public service.

Chapter 3

Territorial jurisdiction

13.3.01. Criminal proceedings

In criminal proceedings the competent court shall be determined in accordance with the provisions of articles 31 to 38 of the Code of Criminal Procedure.

When an offence has been committed in the territorial waters of Madagascar, it may be tried before the criminal court whose jurisdiction includes the part of the territorial sea where the offence took place, in accordance with article 7.3.02 of this Code.

When an offence has been committed on board a Malagasy vessel, it may be tried before the criminal courts as provided for in article 31 of the Code of Criminal Procedure or, at the option of the maritime administrative authority, before the Malagasy criminal court having jurisdiction in the vessel's first port of call or in the vessel's home port in Madagascar.

13.1.06. Actions giving rise to liability of the Malagasy State or public authorities

Malagasy law alone shall apply to actions which may give rise to liability of the Malagasy State or public authorities, except in the case of commercial operations carried out under private law.

Chapter 2
Jurisdiction of courts

13.2.01. Definition

For the purposes of the rules of this chapter:

- The term “general criminal courts” applies to the police courts, the correctional courts and their branches, the court of appeal (criminal appeal division and indictment division) and the criminal courts;
- The term “civil courts” applies to the courts of first instance and their branches and the court of appeal (civil division);
- The term “commercial courts” applies to the commercial courts or, in the absence of a commercial court, to the courts of first instance and their branches which hear commercial cases and to the court of appeal (commercial division);
- The term “labour courts” applies to the labour courts or, in the absence of a labour court, to the courts of first instance and their branches which hear social cases and the court of appeal (social division);
- The term “administrative court” applies to the administrative division of the supreme court, pending the establishment of the Council of State.

13.2.02. Competence of Malagasy courts in general

As a general rule, the Malagasy courts shall be recognized as competent whenever Malagasy law is applicable under the provisions of the preceding chapter.

A foreign national, even if not resident in Madagascar, may be summoned to appear before a Malagasy court for enforcement of obligations arising in Madagascar or abroad in the interest of a Malagasy physical or moral person.

A Malagasy national may be summoned to appear before a Malagasy court for enforcement of any obligation contracted by him abroad, even in the interest of a foreigner.

The jurisdiction provided for in paragraphs 2 and 3 of this article shall be optional.

13.2.03. Jurisdiction of criminal courts

The general criminal courts shall be competent to try:

1. The criminal offences specified and sanctioned in Book 7 of this Code;
2. All other criminal offences committed in Madagascar or in its territorial waters or on board a Malagasy vessel;
3. The offences covered by articles 507 to 510 of the Code of Criminal Procedure;
4. The offences referred to in article 8.2.18 of this Maritime Code.

13.2.04. Jurisdiction of civil courts

The civil courts shall be competent to hear:

1. Disputes concerning either the ownership of vessels or any other real rights to vessels;
2. Applications for compulsory sale of vessels, regardless of the grounds;
3. Applications for enforcement measures relating to vessels.

When an offence has been committed by a Malagasy national on board a foreign vessel outside Malagasy waters, it may likewise be tried before the Malagasy court having jurisdiction in the place where the perpetrator is put ashore.

13.3.02. Civil and commercial proceedings

In civil and commercial proceedings the competent court shall be determined in accordance with the provisions of articles 79 and 80 of the Code of Civil Procedure. If these articles cannot be applied, the proceedings shall be brought initially before the courts in Antananarivo.

13.3.03. Labour proceedings

The competent labour court shall be determined in accordance with the provisions of the Labour Code, and the vessel's home port shall be deemed to be the initial place of maritime employment.

13.3.04. Actions concerning collisions

In actions concerning collisions the applicant may bring the proceedings, at his choice, either before the commercial court in the respondent's place of domicile or before the commercial court in the Malagasy port in which either of the two vessels first sought refuge.

When the collision occurred in the territorial waters of Madagascar, the proceedings may also be brought before the court having jurisdiction over the part of the territorial sea where the collision occurred.

13.3.05. Actions concerning general average

Actions concerning the declaration or settlement of general average shall be brought before a commercial court at the vessel's destination, unless all the parties concerned agree otherwise.

The president of the commercial court chosen in this way shall be competent to appoint one or more average adjusters and experts to draw up a draft settlement proposal.

If this proposal is not accepted amicably by all the parties, it shall be submitted to the court for approval, at the request of the party which acts first.

13.3.06. Actions concerning assistance and salvage

In the case of assistance or salvage, actions seeking payment of remuneration shall be brought either before a court at the respondent's place of domicile, or before a court in the port in which the assisted vessel first sought refuge or to which it would have been brought, or before a court in the port in which the assisted vessel was arrested.

Chapter 4

Statute of limitations and challenges

13.4.01. General provisions

All the time limits prescribed by this Code shall run against minors, persons under legal disability and all incompetent persons, subject to any remedies which they may exercise against their guardians.

These time limits do not constitute statutory presumptions and may not be challenged either by denouncement of an oath sworn to a person claiming to be a debtor or by an oath sworn by such a person.

13.4.02. Five-year limitation rule

All actions concerning activities and juridical acts covered by this Code which are not subject to a specified time limit shall be subject to a time limit of five years, except in the cases mentioned below.

13.4.03. Imprescriptibility of ownership of vessels

Ownership of a registered Malagasy vessel may not be acquired or lost by application of a time limit.

13.4.04. Thirty-year time limit

Actions claiming ownership of a vessel, a wreck, or any other maritime establishment, or its gear and attachments, shall be subject to a time limit of 30 years.

13.4.05. Actions concerning settlement of general average

Actions concerning settlement of general average shall be subject to a time limit of 10 years when an average adjuster has been appointed by court order or by the parties.

13.4.06. Actions seeking compensation for damage caused by criminal offences

Civil actions seeking compensation for damage caused by a criminal offence shall be subject to the time limits prescribed in articles 3, 4 and 5 of the Code of Criminal Procedure.

In the circumstances specified in article 10, paragraph 2, of the Code of Criminal Procedure, such civil actions shall be subject to a time limit of five years in the case of minor and ordinary offences and 10 years in the case of serious offences, when the offence is covered by this Code.

13.4.07. Interruption of time limits

The time limits specified in this Code may be interrupted or suspended in accordance with the general law of civil prescription.

13.4.08. Prescription following a settlement order

When a settlement order recognizing a debt in writing comes into effect between the parties, a time limit of five years shall replace shorter time limits.

13.4.09. Challenges under article 11.1.24

A challenge concerning transport of goods lodged under article 11.1.24 shall not constitute a bar to proceedings imposed by public policy.

It shall not apply either to transport under a bill of lading or to the relations between insured and insurer.

Chapter 5

Arbitration

13.5.01. Scope

The parties shall be free to agree, in advance, to submit to arbitrators of their choice any disputes which may arise in connection with the operations mentioned in article 13.1.01.

13.5.02. Powers of conciliators

The parties may not confer on arbitrators any conciliation powers in respect of disputes concerning transport of goods under a bill of lading or the associated contracts of insurance.

13.5.03. Nullity of arbitration clauses

Any arbitration clause having the direct or indirect effect of removing a dispute from the application of a Malagasy law of public policy shall be null. Such nullity shall be automatically imposed by the competent Malagasy courts.

2. Finland

(a) Act on the Exclusive Economic Zone of Finland 26 November 2004¹

The following is enacted in accordance with the decision of Parliament:

CHAPTER 1 GENERAL PROVISIONS

Section 1 The exclusive economic zone

The exclusive economic zone of Finland shall comprise the part of the sea which is immediately adjacent to the territorial waters of Finland and the outer limit of which is determined by the agreements concluded by Finland with foreign States and the outer limit location of which is given by a Government Decree.

Section 2 The rights and jurisdiction of the State of Finland in the exclusive economic zone

The State of Finland shall, in the exclusive economic zone, have the right of exploring and exploiting, conserving and managing the natural resources, whether living or nonliving, and the right to other activities for the economic exploitation and exploration of the zone.

Finland shall, in the exclusive economic zone, have jurisdiction as provided for in international law with regard to the establishment and use of artificial islands, installations and other structures and to the protection of the marine environment and marine scientific research, and other rights and duties provided for in international law.

CHAPTER 2 LEGISLATION APPLICABLE IN THE EXCLUSIVE ECONOMIC ZONE

Section 3 Legislation applicable to environmental protection and water construction

The Act on Environmental Impact Assessment Procedure (468/1994), the Environmental Protection Act (86/2000) and the Water Act (264/1961) and any provisions issued by virtue of them shall be applied in the exclusive economic zone.

Provisions on the prevention of water pollution caused by normal operation of vessels and on measures to prevent oil damage in the exclusive economic zone are laid down in the Act on the Prevention of Pollution from Ships (300/1979). Further, the Waste Act (1072/1993) shall be applied in the exclusive economic zone as provided for separately.

Section 4 Legislation applicable to fishing, hunting and nature conservation

What is provided for or prescribed in the legislation on fishing, hunting and nature conservation and the provisions on the Common Fisheries Policy of the European Community or by virtue of them, and what has been agreed with foreign States, shall be in force in respect of fishing, hunting, preservation of living natural resources and nature conservation in the exclusive economic zone.

Section 5 Legislation applicable to the protection of submarine cables and pipelines, and to soil materials and minerals

What is provided in the Act on the Protection of Certain Submarine Cables and Pipelines (145/1965) shall be in force in the exclusive economic zone.

¹ Unofficial translation provided by the Ministry for Foreign Affairs. Text communicated by the Permanent Mission of Finland to the United Nations in a note verbale dated 11 January 2005.

The Water Act shall be applied to the extraction of soil materials in the exclusive economic zone.

The Mining Act (503/1965) and any provisions issued by virtue of it shall be applied to any exploration, prospecting and occupation aimed at exploitation of minerals and to utilisation of minerals in the exclusive economic zone.

CHAPTER 3
ECONOMIC EXPLOITATION OF THE EXCLUSIVE ECONOMIC ZONE AND
ANY EXPLORATION AIMED AT IT, AND CONSTRUCTION IN THE EXCLUSIVE ECONOMIC ZONE

Section 6
The right of exploitation

The Government may, on application, give its consent to the exploitation of natural resources of the seabed and its subsoil located in the exclusive economic zone and to exploration aimed at such exploitation or to carrying on, in the exclusive economic zone, of other activities aimed at the economic exploitation of the zone (the right of exploitation). The right of exploitation shall not apply to the activities referred to in section 4. The content of the application shall be prescribed by a Government Decree.

In paragraph 1, natural resources refer to minerals, rock materials and other non-living resources of the seabed and its subsoil and plants and animals belonging to sedentary species which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

A consent may be given for a fixed term or until further notice. The consent decision shall determine any conditions which are necessary for security or securing any rights which according to this Act belong to the State.

The consent decision may be revised, if the activities do not fulfil the conditions laid down in the decision. Suspension of the activities may be ordered on the same grounds. The decision on the suspension of the activities shall be taken by the Ministry of Trade and Industry. The consent decision may also be cancelled, if the activities essentially violate the conditions laid down in the decision. The supervisory authority shall, without delay, inform the Ministry of Trade and Industry of any violation it has noticed.

Section 7
Construction

The Government may, on application, give its consent to the construction and use of artificial islands, installations and other structures used in activities referred to in section 6 and such other installations and structures as may interfere with the exercise, in the exclusive economic zone, of rights which according to international law belong to Finland. The content of the application shall be prescribed by a Government Decree.

In the decision, the recipient of the consent shall, to ensure safety of navigation, be obligated to remove, if possible, any discussed installations and structures. The recipient of the consent shall also be obligated to inform the Ministry of Trade and Industry of the position, depth and dimensions of any installations and structures not entirely removed.

The consent may be given for a fixed term or until further notice. The consent decision shall determine any conditions which are necessary for security or securing any rights which according to this Act belong to the State. If the activities do not fulfil the conditions laid down in the decision or if, after the decision-making, the circumstances have changed essentially, the conditions of the decision may be revised or the consent may be withdrawn. The supervisory authority shall, without delay, inform the Ministry of Trade and Industry of any violation it has noticed.

The decision may order that a safety zone be established around artificial islands, installations and structures constructed in accordance with this Act. The safety zone shall not exceed a distance of 500 metres around the artificial islands, installations or other structures, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization.

CHAPTER 4
MARINE SCIENTIFIC RESEARCH

Section 8
Marine scientific research

In respect of any research which does not fall under the scope of section 4 or section 6, a notification shall be given to the Ministry of Trade and Industry. If the Ministry of Trade and Industry considers that the research project referred to in the notification on marine scientific research falls under the scope of section 6 or section 7, the Ministry shall inform the notifying party of it as soon as possible and no later than four months from receipt of the notification. In other cases, a notified research project may be started at the earliest six months from receipt of the notification, unless the Ministry of Trade and Industry decides that it can be started earlier. The content of a notification of marine scientific research shall be prescribed by a Government Decree.

The Ministry of Trade and Industry may prohibit proceeding with a research project, if the notified information about the research project is erroneous or if the party proceeding with the project is deemed incapable of fulfilling the obligations related to the research project ensuing from article 249 of the United Nations Convention on the Law of the Sea (Finnish Treaty Series 4950/1996) because the party proceeding with the project has earlier failed to fulfil similar obligations. The Ministry of Trade and Industry shall inform of its prohibition decision within four months from receipt of the notification.

Section 9
Suspension and cessation of marine scientific research

The Ministry of Trade and Industry may order suspension of any research referred to in section 8, if such research is not being conducted in accordance with the information communicated in a notification referred to in section 8, paragraph 1, or if the party conducting the research fails to comply with the provisions of article 249 of the United Nations Convention on the Law of the Sea concerning the rights of the coastal State with respect to the marine scientific research project. The order of suspension shall be lifted immediately when the party conducting the research provides correct information about the research or fulfils the requirements of said article.

The Ministry of Trade and Industry may order a complete cessation of any marine scientific research, if any noncompliance with the information communicated in a notification referred to in section 8, paragraph 1 amounts to a major change in the research project or the research activities or if any of the defects referred to in section 9, paragraph 1 are not rectified within a reasonable period of time.

The supervisory authority shall, without delay, inform the Ministry of Trade and Industry of any violation or omission it has noticed.

CHAPTER 5
APPLICATION OF FINNISH CRIMINAL LAW IN THE EXCLUSIVE ECONOMIC ZONE AND PENALTIES

Section 10
Application of Finnish criminal law to offences committed in the exclusive economic zone

Any offence and any punishable attempt of an offence committed on or directed against an artificial island, installation or other structure referred to in section 7 and located in the exclusive economic zone, shall, according to chapter 1, section 1 of the Penal Code (39/1889), be considered as committed in Finland.

Any offence and any punishable attempt of an offence mentioned in sections 11-16 and committed elsewhere in the exclusive economic zone shall, according to chapter 1, section 1 of the Penal Code, be considered as committed in Finland.

If the offence referred to in paragraph 2 has been committed from a foreign vessel during its stay in the exclusive economic zone of Finland, the criminal case must not be investigated in Finland without an order for prosecution by the Prosecutor General, unless the case constitutes a case referred to in chapter 1, section 12, paragraph 2 of the Penal Code.

Section 11

Environmental offences in the exclusive economic zone

Any penalty for damaging of the environment, serious damaging of the environment, environmental violation, damaging of the environment through negligence and nature conservation offence committed in the exclusive economic zone in violation of the Acts mentioned in section 3, paragraph 1 shall be imposed in accordance with chapter 48, sections 1-5 of the Penal Code. The provisions of the Penal Code on corporate criminal liability shall apply to the offences mentioned in this paragraph.

Any penalty for violation of the Environmental Protection Act committed in the exclusive economic zone shall be imposed in accordance with section 116, paragraph 2 of the Environmental Protection Act, any penalty for a waste violation committed in the exclusive economic zone shall be imposed in accordance with section 60 of the Waste Act, and any penalty for a nature conservation violation committed in the exclusive economic zone shall be imposed in accordance with section 58, paragraph 2 of the Nature Conservation Act (1096/1996).

Section 12

Permit violation against the Water Act in the exclusive economic zone

Any penalty for a permit violation against the Water Act committed in the exclusive economic zone shall be imposed in accordance with chapter 13, section 3 of the Water Act.

Section 13

Fishing offence, concealment of illegal catch, fishing violation and violation of the Common Fisheries Policy in the exclusive economic zone

Any penalty for a fishing offence and concealment of illegal catch committed in the exclusive economic zone shall be imposed in accordance with chapter 48a, sections 2 and 4 of the Penal Code. In the imposition of the penalty, account shall also be taken of the provisions of chapter 48a, section 7 of the Penal Code.

Any penalty for a fishing violation committed in the exclusive economic zone shall be imposed in accordance with section 108 of the Fishing Act (286/1982).

Any penalty for violation of the Common Fisheries Policy committed in the exclusive economic zone shall be imposed in accordance with section 7, paragraph 1 of the Act on Implementing the Common Fisheries Policy of the European Community (1139/1994).

Section 14

Hunting offence, concealment of illegal quarry, hunting violation and violation of provisions of the Hunting Act in the exclusive economic zone

Any penalty for a hunting offence and concealment of illegal quarry committed in the exclusive economic zone shall be imposed in accordance with chapter 48a sections 1 and 4 of the Penal Code.

Any penalty for a hunting violation and violation of provisions of the Hunting Act committed in the exclusive economic zone shall be imposed in accordance with sections 74 and 75 of the Hunting Act (615/1993).

Section 15

Mining violation in the exclusive economic zone

Any penalty for a mining violation committed in the exclusive economic zone shall be imposed in accordance with section 62, paragraph 2 of the Mining Act.

Section 16

Illegal activities in the exclusive economic zone

Anyone who, deliberately or negligently, 1) proceeds with activities referred to in section 6 or 7 without a consent of the Government, 2) acts against the conditions laid down in a decision referred to in section 6 or 7, or 3) acts against the prohibition referred to in section 8, paragraph 2, shall be sentenced to a fine for illegal activity in the exclusive economic zone.

CHAPTER 6
MISCELLANEOUS PROVISIONS

Section 17

Law applicable on artificial islands, installations and other structures

Finnish law shall apply on artificial islands, installations and other structures constructed in accordance with this Act as if the structure concerned was located in the nearest part of the Finnish territory.

Section 18

Territorial competence of authorities

In the exclusive economic zone, the regional environment centre shall act as the liaison authority referred to in the Act on Environmental Impact Assessment Procedure and the supervisory authority referred to in the Nature Conservation Act, the Environmental Protection Act, the Water Act and the Waste Act. The competent regional environment centre shall be the centre by whose territory the project is located in the exclusive economic zone. The border between the territories of regional environment centres is considered to extend, without changing course, from the outer limit of the territorial waters to the outer limit of the exclusive economic zone.

The Western Finland Environmental Permit Authority acts in the exclusive economic zone as a permit authority referred to in the Environmental Protection Act and the Water Act.

Section 19

Supervision and orders of the frontier guard authority

The activities referred to in sections 6-8 are supervised by the Frontier Guard. A decision referred to in sections 6-9 shall be notified without delay by the decision-maker to the Headquarters of the Frontier Guard. The Ministry of Trade and Industry shall, without delay, inform the Headquarters of the Frontier Guard also of a notification referred to in section 8, unless it considers that the research project referred to in the notification falls under the scope of section 6 or section 7. At the same time, the information shall also be given to the notifying party.

The frontier guard authority is entitled to order immediate cessation of any activities referred to in sections 6-8 which are conducted without a consent of the Government or a notification to the Ministry of Trade and Industry, and any activities continued despite an order referred to in section 9.

Section 20

Threat of a fine and threat of ordering performance at the defaulter's expense

To ensure compliance with a decision made according to this Act, a threat of a fine or a threat of ordering performance at the defaulter's expense may be imposed as provided in the Act on Administrative Fines (1113/1990).

Section 21

Use of coercive measures in criminal procedure

On the basis of offences referred to in this Act and committed in the exclusive economic zone, coercive measures may be used as provided in the Coercive Measures Act (450/1987). Section 28b of the Act on the Prevention of Pollution from Ships (300/1979) lays down the prerequisites for the use of coercive measures in the investigation of an act referred to in section 28, paragraph 1 of that Act and committed from a foreign vessel in the exclusive economic zone of Finland.

Section 22

Appeals

Any decision made by the Government or the Ministry of Trade and Industry by virtue of this Act may be appealed against as provided in the Administrative Judicial Procedure Act (586/1996).

Any other decision necessary for the implementation of a project referred to in this Act may be appealed against as provided separately.

Section 23
The competent courts

Any criminal cases referred to in this Act shall be processed by district courts mentioned in chapter 21, section 1 of the Maritime Act (674/1994). The competent court shall be the court whose judicial district can be considered nearest the scene of the offence, by applying the provisions of chapter 4, section 1, paragraphs 1 and 2 of the Helsinki, November 26, 2004, Criminal Procedure Act (689/1997). For the purpose of this section, the limits of the judicial districts of these district courts shall be considered to extend, without changing course, from the outer limit of the territorial waters to the outer limit of the exclusive economic zone.

CHAPTER 7
ENTRY INTO FORCE

Section 24
Entry into force

This Act shall enter into force on February 1, 2005.

This Act shall repeal the Continental Shelf Act (149/1965) of 5 March 1965 and the Act on the Fishing Zone of Finland (839/1974) of 15 November 1974 as subsequently amended. The provisions issued by virtue of the latter Act shall, however, remain in force.

Any permit issued by virtue of the Continental Shelf Act or any decision made by virtue of section 4 of the Continental Shelf Act which is in force when this Act enters into force shall apply, unless otherwise provided by virtue of this Act.

If reference is made to the Act on the Fishing Zone of Finland elsewhere in legislation, the provisions of this Act on the Exclusive Economic Zone of Finland shall apply, mutatis mutandis, instead of it.

Measures necessary for the implementation of this Act may be undertaken prior to its entry into force.
President of the Republic of Finland

TARJA HALONEN

Minister for Foreign Affairs Erkki Tuomioja

(b) Government Decree on the Exclusive Economic Zone of Finland
2 December 2004¹

In accordance with the Government decision, made on the submission of the Ministry for Foreign Affairs, the following is decreed by virtue of the Act on the Exclusive Economic Zone of Finland (1058/2004) of November 26, 2004:

Section 1

The starting point of the outer limit of the exclusive economic zone of Finland is, in the eastern Gulf of Finland, the southernmost terminal point of the state boundary between Finland and Russia (buoy N:o 16), wherefrom the outer limit of the exclusive economic zone extends to the west and southwest and passes through the following points, the latitudes and longitudes of which are given in the WGS84 coordinate system and which are connected by straight lines (loxodromes):

No.	Northern latitude	Eastern longitude
1	60°10.296'	27°10.866'
2	60°10.296'	26°57.466'
3	60°10.096'	26°54.466'

¹ Unofficial translation provided by the Ministry for Foreign Affairs of Finland. Text communicated by the Permanent Mission of Finland to the United Nations in a note verbale dated 11 January 2005.

4	60° 8.495'	26°47.466'
5	60° 6.495'	26°37.966'
6	60° 6.095'	26°32.166'
7	59°59.695'	26°20.366'

From point No 7 the outer limit of the exclusive economic zone extends in the Gulf of Finland and in the northern part of the Baltic Sea to the west and southwest and passes through the following points, the latitudes and longitudes of which are given in the WGS84 coordinate system and which are connected by straight lines (geodetic lines):

No.	Northern latitude	Eastern longitude
8	59°59.678'	26°20.147'
9	59°59.095'	26°12.666'
10	59°58.095'	26° 7.966'
11	59°51.694'	25°58.067'
12	59°52.594'	25°27.566'
13	59°53.294'	25°10.166'
14	59°52.093'	24°57.166'
15	59°50.493'	24°49.266'
16	59°44.193'	24°24.367'
17	59°37.092'	23°54.367'
18	59°31.591'	23°29.667'
19	59°31.691'	23°9.567'
20	59°24.891'	22°45.068'
21	59°22.790'	22° 9.868'
22	59°18.689'	21°46.568'
23	59°11.489'	21°11.168'
24	58°50.670'	20°28.888'

From point No 24 the outer limit of the exclusive economic zone extends in the northern part of the Baltic Sea and in the Aland Sea to the northwest and passes through the following points, the latitudes and longitudes of which are given in the WGS84 coordinate system and which are connected by straight lines (geodetic lines):

No	Northern latitude	Eastern longitude
25	58°51.776'	20°28.276'
26	59°26.701'	20° 9.200'
27	59°47.501'	19°39.497'
28	60°11.501'	19° 4.992'
29	60°14.115'	19° 6.162'

Point No 29 is the southernmost terminal point of the state boundary between Finland and Sweden to the south of the islet of Market.

In the Gulf of Bothnia, to the north of the islet of Market, from the northernmost terminal point of the state boundary between Finland and Sweden, the outer limit of the exclusive economic zone extends to the north and further to the northeast and passes through the following points, the latitudes and longitudes of which are given in the national coordinate system of Finland (KKJ) and which are connected by straight lines:

No.	Northern latitude	Eastern longitude
30	60°40.7'	19°14.1'
31	62°42.0'	19°31.5'
32	63°20.0'	20°24.0'
33	63°29.1'	20°41.8'
34	63°31.3'	20°56.4'
35	63°40.0'	21°30.0'
36	65°30.9'	24° 8.2'

From point No 36 the outer limit of the exclusive economic zone extends to the northnortheast and ends at the southernmost terminal point of the state boundary between Finland and Sweden to the south of the town of Tornio.

Section 2

An application for a Government consent referred to in sections 6 and 7 of the Act on the Exclusive Economic Zone of Finland shall detail:

- 1) The name or corporate name, municipality or place of residence or registered office, and nationality of the applicant or the applicants;
- 2) A description of the nature and objectives of the activities;
- 3) A description of the methods and means to be used;
- 4) The precise geographical areas where the activities are to be carried out; and
- 5) The date of starting and duration of the activities.

The application shall be submitted to the Ministry of Trade and Industry at least six months before the planned date of starting the activities.

Section 3

A notification referred to in section 8, paragraph 1, of the Act on the Exclusive Economic Zone of Finland shall detail:

- 1) The name or corporate name, municipality or place of residence or registered office, and nationality of the party or parties conducting research project;
- 2) The name of the sponsoring institution, its director and the person in charge of the research project;
- 3) A description of the nature and objectives of the research project;
- 4) A description of the methods and means to be used, including the name, tonnage, type and class of the vessel, and a description of the scientific equipment;
- 5) The precise geographical areas where the research project is to be conducted; and
- 6) The expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate; and
- 7) The extent to which it is considered that Finnish research institutions should be able to participate or to be represented in the research.

The notification shall be given to the Ministry of Trade and Industry at least six months in advance of the expected starting date of the research project.

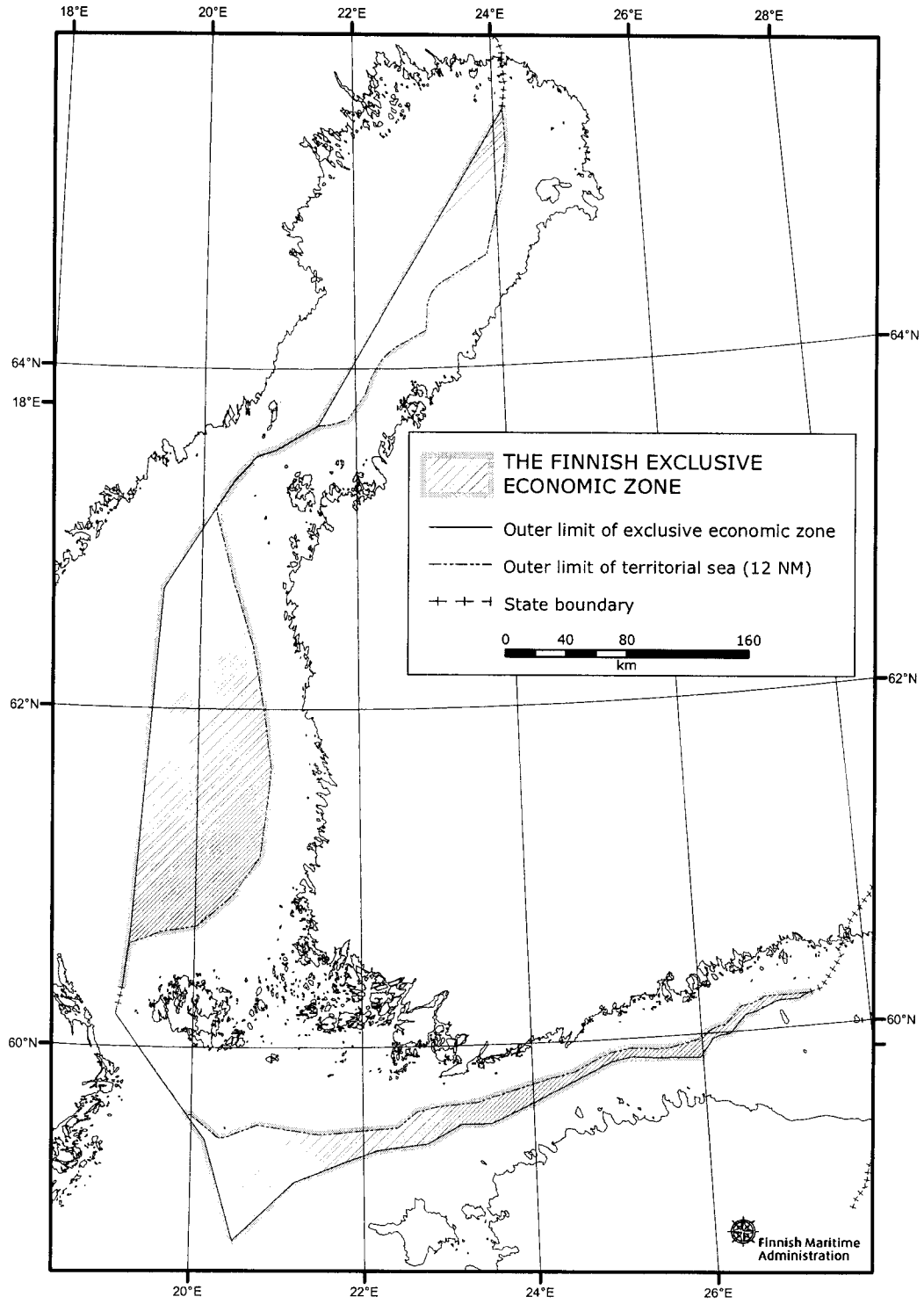
Section 4

This Decree shall enter into force on 1 February 2005.

Helsinki, 2 December 2004

Matti Vanhanen, Prime Minister, Acting Minister for Foreign Affairs

Counsellor Marja Lehto



3. Algeria:
Presidential Decree No. 04-344 of 23 Ramadan 1425 (6 November 2004)
Establishing a Zone Contiguous to the Territorial Sea¹

The President of the Republic,

Considering the report of the Minister of State, Minister for Foreign Affairs,

Considering the Constitution, and in particular articles 12 and 77-6 thereof,

Pursuant to order No. 73-12 of 29 Safar 1393 (3 April 1973) creating the National Coast Guard Service, as amended and completed,

Pursuant to Act No. 79-07 of 26 Sha'ban 1399 (21 July 1979) enacting the Customs Code, as amended and completed, and in particular articles 1 and 29 thereof,

Pursuant to Presidential Decree No. 96-53 of 2 Ramadan 1416 (22 January 1996) ratifying the United Nations Convention on the Law of the Sea, in particular article 33 thereof,

Pursuant to decree No. 63-403 of 12 October 1963 delimiting the territorial waters,

Pursuant to decree No. 84-181 of 7 Dhu'lqa'da 1404 (4 August 1984) defining the baselines from which the breadth of maritime zones coming under Algerian jurisdiction,

Decrees the following:

Article 1. A zone contiguous to the territorial sea is hereby created.

The breadth of the said zone is 24 nautical miles, measured from the baselines of the territorial sea.

Article 2. The right of control shall be exercised within that zone in accordance with articles 33 and 303 of the above-mentioned United Nations Convention on the Law of the Sea.

Article 3. The present decree shall be published in the official gazette of the People's Democratic Republic of Algeria.

Done at Algiers on 23 Ramadan 1425 (6 November 2004).

Certified true copy

Algiers, 12 February 2005

(Signed) Abdelaziz Bouteflika

(Signed) [illegible]

Secretary-General of the Government

¹ Original: French. Text communicated by the Permanent Mission of the People's Democratic Republic of Algeria in a note verbale dated 1 March 2005 addressed to the Secretariat of the United Nations.

C. Multilateral Treaties

Regional Cooperation Agreement on Combating Piracy
and Armed Robbery against Ships in Asia
11 November 2004¹

The Contracting Parties to this Agreement,
Concerned about the increasing number of incidents of piracy and armed robbery against ships in Asia,
Mindful of the complex nature of the problem of piracy and armed robbery against ships,
Recognizing the importance of safety of ships, including their crew, exercising the right of navigation provided for in the United Nations Convention on the Law of the Sea of 10 December 1982, hereinafter referred to as "the UNCLOS",

Reaffirming the duty of States to cooperate in the prevention and suppression of piracy under the UNCLOS,

Recalling "Tokyo Appeal" of March 2000, "Asia Anti-Piracy Challenges 2000" of April 2000 and "Tokyo Model Action Plan" of April 2000,

Noting the relevant resolutions adopted by the United Nations General Assembly and the relevant resolutions and recommendations adopted by the International Maritime Organization,

Conscious of the importance of international cooperation as well as the urgent need for greater regional cooperation and coordination of all States affected within Asia, to prevent and suppress piracy and armed robbery against ships effectively,

Convinced that information sharing and capacity building among the Contracting Parties will significantly contribute towards the prevention and suppression of piracy and armed robbery against ships in Asia,

Affirming that, to ensure greater effectiveness of this Agreement, it is indispensable for each Contracting Party to strengthen its measures aimed at preventing and suppressing piracy and armed robbery against ships,

Determined to promote further regional cooperation and to enhance the effectiveness of such cooperation,
Have agreed as follows:

PART I
INTRODUCTION

Article 1
Definitions

1. For the purposes of this Agreement, "piracy" means any of the following acts:

(a) Any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

On the high seas, against another ship, or against persons or property on board such ship;

Against a ship, persons or property in a place outside the jurisdiction of any State;

(b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

¹ The text of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia was provided to the Division by the Permanent Mission of Japan to the United Nations. The Regional Agreement was adopted on 11 November 2004 in Tokyo at an intergovernmental conference attended by representatives of Bangladesh, Brunei Darussalam, Cambodia, China, Japan, India, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Republic of Korea, Sri Lanka, Singapore, Thailand and Viet Nam.

(c) Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

For the purposes of this Agreement, "armed robbery against ships" means any of the following acts:

Any illegal act of violence or detention, or any act of depredation, committed for private ends and directed against a ship, or against persons or property on board such ship, in a place within a Contracting Party's jurisdiction over such offences;

Any act of voluntary participation in the operation of a ship with knowledge of facts making it a ship for armed robbery against ships;

Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 2 General Provisions

1. The Contracting Parties shall, in accordance with their respective national laws and regulations and subject to their available resources or capabilities, implement this Agreement, including preventing and suppressing piracy and armed robbery against ships, to the fullest extent possible.

2. Nothing in this Agreement shall affect the rights and obligations of any Contracting Party under the international agreements to which that Contracting Party is party, including the UNCLOS, and the relevant rules of international law.

3. Nothing in this Agreement shall affect the immunities of warships and other government ships operated for non-commercial purposes.

4. Nothing in this Agreement, nor any act or activity carried out under this Agreement shall prejudice the position of any Contracting Party with regard to any dispute concerning territorial sovereignty or any issues related to the law of the sea.

5. Nothing in this Agreement entitles a Contracting Party to undertake in the territory of another Contracting Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Contracting Party by its national law.

6. In applying paragraph 1 of Article 1, each Contracting Party shall give due regard to the relevant provisions of the UNCLOS without prejudice to the rights of the third Parties.

Article 3 General Obligations

1. Each Contracting Party shall, in accordance with its national laws and regulations and applicable rules of international law, make every effort to take effective measures in respect of the following:

To prevent and suppress piracy and armed robbery against ships;

To arrest pirates or persons who have committed armed robbery against ships;

To seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and

To rescue victim ships and victims of piracy or armed robbery against ships.

2. Nothing in this Article shall prevent each Contracting Party from taking additional measures in respect of subparagraphs (a) to (d) above in its land territory.

PART II INFORMATION SHARING CENTER

Article 4 Composition

1. An Information Sharing Center, hereinafter referred to as "the Center", is hereby established to promote close cooperation among the Contracting Parties in preventing and suppressing piracy and armed robbery against ships.

2. The Center shall be located in Singapore
3. The Center shall be composed of the Governing Council and the Secretariat.
4. The Governing Council shall be composed of one representative from each Contracting Party. The Governing Council shall meet at least once every year in Singapore, unless otherwise decided by the Governing Council.
5. The Governing Council shall make policies concerning all the matters of the Center and shall adopt its own rules of procedure, including the method of selecting its Chairperson.
6. The Governing Council shall take its decisions by consensus.
7. The Secretariat shall be headed by the Executive Director who shall be assisted by the staff. The Executive Director shall be chosen by the Governing Council.
8. The Executive Director shall be responsible for the administrative, operational and financial matters of the Center in accordance with the policies as determined by the Governing Council and the provisions of this Agreement, and for such other matters as determined by the Governing Council.
9. The Executive Director shall represent the Center. The Executive Director shall, with the approval of the Governing Council, make rules and regulations of the Secretariat.

Article 5
Headquarters Agreement

The Center, as an international organization whose members are the Contracting Parties to this Agreement, shall enjoy such legal capacity, privileges and immunities in the Host State of the Center as are necessary for the fulfillment of its functions.

The Executive Director and the staff of the Secretariat shall be accorded, in the Host State, such privileges and immunities as are necessary for the fulfillment of their functions.

The Center shall enter into an agreement with the Host State on matters including those specified in paragraphs 1 and 2 of this Article.

Article 6
Financing

1. The expenses of the Center, as provided for in the budget decided by the Governing Council, shall be provided by the following sources:
 - (a) Host State financing and support;
 - (b) Voluntary contributions from the Contracting Parties;
 - (c) Voluntary contributions from international organizations and other entities, in accordance with relevant criteria adopted by the Governing Council; and
 - (d) Any other voluntary contributions as may be agreed upon by the Governing Council.
2. Financial matters of the Center shall be governed by a Financial Regulation to be adopted by the Governing Council.
3. There shall be an annual audit of the accounts of the Center by an independent auditor appointed by the Governing Council. The audit report shall be submitted to the Governing Council and shall be made public, in accordance with the Financial Regulation.

Article 7
Functions

The functions of the Center shall be:

- (a) To manage and maintain the expeditious flow of information relating to incidents of piracy and armed robbery against ships among the Contracting Parties;
- (b) To collect, collate and analyze the information transmitted by the Contracting Parties concerning piracy and armed robbery against ships, including other relevant information, if any, relating to individuals and transnational organized criminal groups committing acts of piracy and armed robbery against ships;

- (c) To prepare statistics and reports on the basis of the information gathered and analyzed under subparagraph (b), and to disseminate them to the Contracting Parties;
- (d) To provide an appropriate alert, whenever possible, to the Contracting Parties if there is a reasonable ground to believe that a threat of incidents of piracy or armed robbery against ships is imminent;
- (e) To circulate requests referred to in Article 10 and relevant information on the measures taken referred to in Article 11 among the Contracting Parties;
- (f) To prepare non-classified statistics and reports based on information gathered and analyzed under subparagraph (b) and to disseminate them to the shipping community and the International Maritime Organization; and
- (g) To perform such other functions as may be agreed upon by the Governing Council with a view to preventing and suppressing piracy and armed robbery against ships.

Article 8
Operation

1. The daily operation of the Center shall be undertaken by the Secretariat.
2. In carrying out its functions, the Center shall respect the confidentiality of information provided by any Contracting Party, and shall not release or disseminate such information unless the consent of that Contracting Party is given in advance.
3. The Center shall be operated in an effective and transparent manner, in accordance with the policies made by the Governing Council, and shall avoid duplication of existing activities between the Contracting Parties.

PART III
COOPERATION THROUGH THE INFORMATION SHARING CENTER

Article 9
Information Sharing

1. Each Contracting Party shall designate a focal point responsible for its communication with the Center, and shall declare its designation of such focal point at the time of its signature or its deposit of an instrument of notification provided for in Article 18.
2. Each Contracting Party shall, upon the request of the Center, respect the confidentiality of information transmitted from the Center.
3. Each Contracting Party shall ensure the smooth and effective communication between its designated focal point, and other competent national authorities including rescue coordination centres, as well as relevant non-governmental organizations.
4. Each Contracting Party shall make every effort to require its ships, ship owners, or ship operators to promptly notify relevant national authorities including focal points, and the Center when appropriate, of incidents of piracy or armed robbery against ships.
5. Any Contracting Party which has received or obtained information about an imminent threat of, or an incident of, piracy or armed robbery against ships shall promptly notify relevant information to the Center through its designated focal point.
6. In the event that a Contracting Party receives an alert from the Center as to an imminent threat of piracy or armed robbery against ships pursuant to subparagraph (d) of Article 7, that Contracting Party shall promptly disseminate the alert to ships within the area of such an imminent threat.

Article 10
Request for Cooperation

1. A Contracting Party may request any other Contracting Party, through the Center or directly, to cooperate in detecting any of the following persons, ships, or aircraft:
Pirates;

Persons who have committed armed robbery against ships;

Ships or aircraft used for committing piracy or armed robbery against ships, and ships taken by and under the control of pirates or persons who have committed armed robbery against ships; or

Victim ships and victims of piracy or armed robbery against ships.

2. A Contracting Party may request any other Contracting Party, through the Center or directly, to take appropriate measures, including arrest or seizure, against any of the persons or ships mentioned in subparagraph (a), (b), or (c) of paragraph 1 of this Article, within the limits permitted by its national laws and regulations and applicable rules of international law.

3. A Contracting Party may also request any other Contracting Party, through the Center or directly, to take effective measures to rescue the victim ships and the victims of piracy or armed robbery against ships.

The Contracting Party which has made a direct request for cooperation pursuant to paragraphs 1, 2 and 3 of this Article shall promptly notify the Center of such request.

Any request by a Contracting Party for cooperation involving extradition or mutual legal assistance in criminal matters shall be made directly to any other Contracting Party.

Article 11

Cooperation by the Requested Contracting Party

1. A Contracting Party, which has received a request pursuant to Article 10, shall, subject to paragraph 1 of Article 2, make every effort to take effective and practical measures for implementing such request.

2. A Contracting Party, which has received a request pursuant to Article 10, may seek additional information from the requesting Contracting Party for the implementation of such request.

3. A Contracting Party, which has taken measures referred to in paragraph 1 of this Article, shall promptly notify the Center of the relevant information on the measures taken.

PART IV COOPERATION

Article 12

Extradition

A Contracting Party shall, subject to its national laws and regulations, endeavor to extradite pirates or persons who have committed armed robbery against ships, and who are present in its territory, to the other Contracting Party which has jurisdiction over them, at the request of that Contracting Party.

Article 13

Mutual Legal Assistance

A Contracting Party shall, subject to its national laws and regulations, endeavour to render mutual legal assistance in criminal matters, including the submission of evidence related to piracy and armed robbery against ships, at the request of another Contracting Party.

Article 14

Capacity Building

1. For the purpose of enhancing the capacity of the Contracting Parties to prevent and suppress piracy and armed robbery against ships, each Contracting Party shall endeavour to cooperate to the fullest possible extent with other Contracting Parties which request cooperation or assistance.

2. The Center shall endeavour to cooperate to the fullest possible extent in providing capacity building assistance.

3. Such capacity building cooperation may include technical assistance such as educational and training programs to share experiences and best practices.

Article 15
Cooperative Arrangements

Cooperative arrangements such as joint exercises or other forms of cooperation, as appropriate, may be agreed upon among the Contracting Parties concerned.

Article 16
Protection Measures for Ships

Each Contracting Party shall encourage ships, ship owners, or ship operators, where appropriate, to take protective measures against piracy and armed robbery against ships, taking into account the relevant international standards and practices, in particular, recommendations adopted by the International Maritime Organization.

PART V
FINAL PROVISIONS

Article 17
Settlement of Disputes

Disputes arising out of the interpretation or application of this Agreement, including those relating to liability for any loss or damage caused by the request made under paragraph 2 of Article 10 or any measure taken under paragraph 1 of Article 11, shall be settled amicably by the Contracting Parties concerned through negotiations in accordance with applicable rules of international law.

Article 18
Signature and Entry into Force

1. This Agreement shall be open for signature at the depository referred to in paragraph 2 below by the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of China, the Republic of India, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, the Socialist Republic of Viet Nam.

2. The Government of Singapore is the depository of this Agreement.

3. This Agreement shall enter into force 90 days after the date on which the tenth instrument of notification by a State listed in paragraph 1, indicating the completion of its domestic requirements, is submitted to the depository. Subsequently it shall enter into force in respect of any other State listed in paragraph 1 above 30 days after its deposit of an instrument of notification to the depository.

4. The depository shall notify all the States listed in paragraph 1 of the entry into force of this Agreement pursuant to paragraph 3 of this Article.

5. After this Agreement has entered into force, it shall be open for accession by any State not listed in paragraph 1. Any State desiring to accede to this Agreement may so notify the depository, which shall promptly circulate the receipt of such notification to all other Contracting Parties. In the absence of a written objection by a Contracting Party within 90 days of the receipt of such notification by the depository, that State may deposit an instrument of accession with the depository, and become a party to this Agreement 60 days after such deposit of instrument of accession.

Article 19
Amendment

1. Any Contracting Party may propose an amendment to this Agreement, any time after the Agreement enters into force. Such amendment shall be adopted with the consent of all Contracting Parties.

2. Any amendment shall enter into force 90 days after the acceptance by all Contracting Parties. The instruments of acceptance shall be deposited with the depository, which shall promptly notify all other Contracting Parties of the deposit of such instruments.

Article 20
Withdrawal

1. Any Contracting Party may withdraw from this Agreement at any time after the date of its entry into force.
2. The withdrawal shall be notified by an instrument of withdrawal to the depository.
3. The withdrawal shall take effect 180 days after the receipt of the instrument of withdrawal by the depository.
4. The depository shall promptly notify all other Contracting Parties of any withdrawal.

Article 21
Authentic Text

This Agreement shall be authentic in the English language.

Article 22
Registration

This Agreement shall be registered by the depository pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

D. Communications by States

1. Statement of the position of the Government of the Republic of Cyprus, dated 28 December 2004, with respect to the information note by Turkey, concerning the latter's objection to the Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone of 17 February 2003¹

The Permanent Mission of the Republic of Cyprus to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to bring to the latter's attention, in his capacity as depositary of the United Nations Convention on the Law of the Sea of 1982 ("the Convention"), the following statement regarding the position of the Government of the Republic of Cyprus with respect to the information note by Turkey, concerning the latter's objection to the Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone of 17 February 2003, as published in the Law of the Sea Bulletin No. 54.

The Government of the Republic of Cyprus wishes to refute the arguments expressed by the Republic of Turkey on the following grounds:

1. The Republic of Turkey's allegations are vague and unfounded, both in law and in substance. They are not based or supported by any specific legal or substantive argument.

2. The Agreement on the Delimitation of the EEZ was signed between the Governments of two sovereign States, one of the them being the Government of the Republic of Cyprus and not "the Greek Cypriot Administration of Southern Cyprus", as Turkey claims, by arguing, alone among all the members of the international community, that the Government of the Republic of Cyprus does not exist.

It suffices in this regard to simply refer to the United Nations General Assembly Resolution 3212 (XXIX) of 1 November 1974 and Security Council Resolutions 541 (83) and 550 (84) on Cyprus. Furthermore, since the 1st of May 2004, the Republic of Cyprus is a Member State of the European Union.

3. Regarding the technical aspects of Turkey's objection to the delimitation of the EEZ between the Republic of Cyprus and the Arab Republic of Egypt, the following facts suffice to refute the Turkish allegations:

Both the Republic of Cyprus and the Arab Republic of Egypt are Member States of the United Nations Convention on the Law of the Sea of 1982, among a total number of 146 States Parties to the Convention, (the European Community also ratified the Convention), whereas Turkey remains among the very few countries opposing the Convention and its global significance in the field of international law.

In accordance with established principles and rules of international law and the respective provisions of the Convention, the Republic of Cyprus and the Arab Republic of Egypt exercised their legitimate sovereign rights to delimit the EEZ, lying between their respective coasts in a distance less than 400 nautical miles.

The Republic of Cyprus submitted in 1974 a Law proclaiming its Continental Shelf and in May 1993 a set of coordinates and a chart depicting its baselines to the United Nations Division for Ocean Affairs and the Law of the Sea (Bulletin No. 24 of December 1993), without any objection on behalf of Turkey. Under international law such practice amounts, inter alia, to tacit recognition of these claims and of the entitlement of the Republic of Cyprus to legitimate claims of maritime zones.

When delimiting their EEZ, the Republic of Cyprus and the Arab Republic of Egypt, followed strictly the internationally accepted technical methods and specifications, as incorporated in the relevant Manual and Instructions of the International Hydrographic Organization.

Furthermore, when deciding on the extent of the delimitation line, both countries agreed to avoid extending that line in areas where the rights of third coastal States could be affected (disclaimer), without abolishing their sovereign rights to do so in the future, when an agreement with those States could be reached.

4. Moreover the Turkish allegation that "the delimitation of the EEZ and the continental shelf beyond the western parts of the longitude 32°16'18" should be effected by agreement between the related States at the region

¹Text communicated by the Permanent Mission of Cyprus to the United Nations in a note verbale dated 28 December 2004.

based on the principle of equity” is totally unfounded under international law and the Convention for the following reasons:

(a) Such allegation implying that the western parts of the longitude 32°16'18" should be effected by agreement, is tantamount to accepting that islands and even more so a sovereign island State, in this case the Republic of Cyprus, is deprived of any maritime zones, contrary to customary international law, the Convention (articles 56, 77 and 121) and the International Court of Justice rulings.

(b) Articles 74 and 83 of the Convention provide that the delimitation of the EEZ and of the Continental Shelf, respectively, between States with opposite or adjacent coasts “shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution”. Turkey, in its prejudicial position against the Convention’s relevant provisions, intentionally bypasses the obligation that the delimitation shall be effected by agreement on the basis of international law.

5. Turkey, by its unfounded allegations, attempts to intervene without any legal basis, with the legitimate and sovereign rights of third States, i.e. the Republic of Cyprus, the Arab Republic of Egypt and possibly other States that may be involved. This attempt aims at, especially, the rights of these States to delimit the EEZ by agreement under the Convention on the basis of international law. Therefore, these Turkish arguments are in fact legally null and void.

The Permanent Mission of the Republic of Cyprus to the United Nations would highly appreciate if the Secretary-General informs the States Parties to the United Nations Convention on the Law of the Sea 1982 of the content of this Note and publishes it in the next “Law of the Sea Bulletin”.

The Permanent Mission of the Republic of Cyprus thanks the Secretary-General and avails itself of this opportunity to renew to him the assurances of its highest consideration.

2. Note verbale dated 11 January 2005 from the Permanent Mission of the Republic of Croatia to the United Nations addressed to the Secretary-General of the United Nations with reference to the note from the Permanent Mission of the Republic of Slovenia dated 30 August 2004¹

The Permanent Mission of the Republic of Croatia to the United Nations presents its compliments to the Secretary-General of the United Nations in his capacity as the depositary of the United Nations Convention on the Law of the Sea and with reference to the note of the Permanent Mission of the Republic of Slovenia to the United Nations No. N-160/04 of 30 August 2004, which was circulated to the States Parties to the Convention, further to the arguments presented in the Note of the Permanent Mission of the Republic of Croatia to the United Nations No. 288/04 of 8 July 2004, has the honor to communicate the following:

With respect to the statement in the aforementioned note, that the governments of both countries endorsed the “Treaty between the Republic of Croatia and the Republic of Slovenia on the Common State Border”, which has been initialed by the head of the delegations of the two countries, the Republic of Croatia would like to point out that no treaty on land and maritime border has ever been signed or concluded between the Republic of Croatia and the Republic of Slovenia. The Republic of Croatia furthermore strongly rejects the map attached to the aforementioned note, presented as the map of the “agreed course of the maritime border”, as being incorrect and misleading. At one stage of the negotiations between the two countries in 2001, the heads of delegations only initialed a text, which was later never signed and can in no way be regarded as a treaty on the border between two countries. It should be noted that this was only a stage in the negotiating process which shortly afterwards proved futile and without prospect. Furthermore, before initialing the text, Slovenian side was informed that Croatian side might be able to take further steps (i.e. deliver a decision to sign the agreement) only after the draft text was submitted to Croatian Parliament for consideration, as provided in the Declaration of Croatian Parliament from March 1999. However, the overall political and expert assessment of the Draft Border Agreement in Croatian Parliament as well as in Croatian public was not conducive to enabling the Government to continue the internal procedure for its signing. Consequently, on various occasions, Slovene side was informed by high ranking Croatian officials, including the official letter of Croatian Prime Minister, that the solutions from the Draft Agreement on maritime border were not acceptable to the Republic of Croatia, and that the initialed Draft could not have any legal

¹ Note verbale from the Permanent Mission of the Republic of Croatia to the United Nations dated 11 January 2005

effects and could not constitute the basis for future solutions. So, the statement of the Republic of Croatia in Note of the Permanent Mission of the Republic of Croatia to the United Nations No. 288/04 of 8 July 2004 regarding the fact that no mutually accepted agreement has been reached or concluded concerning the border between the Republic of Croatia and the Republic of Slovenia, is correct and true and reflects the state of facts.

With regard to the other claim put forward in the aforementioned note, the Republic of Croatia avails itself of this opportunity to recall that the Republic of Slovenia by itself, neither as a part of the former SFRY nor as a sovereign State, has ever had a direct territorial exit to the high seas or acquired one since the dissolution of the former SFRY. Consequently, the Republic of Slovenia has never had its own continental shelf nor acquired the right to declare its own exclusive economic zone. There are no historically exercised rights “to direct exit to the high seas” by the former republics of the SFRY. The only state which existed at that time and exercised that right was the former SFRY, as the only subject of international law to which those rights could be attributed. All former republics, exclusively as part of the former state, benefited from it, including those that had no coast at sea. Contrary to the administrative borders on land which in the former SFRY existed between the former republics and which as of the moment of independence of each of the former republic became international borders between these new states, the maritime borders between the former republics were not formally established (although the competent authorities of the respective republics did exercise their jurisdiction at sea), and as such could not become the international borders of new states (i.e. the *uti possidetis* principle could not be applied in case of maritime delimitation). Consequently, the maritime borders were left to be delimited from the point in which the land border between Republic of Croatia and Republic of Slovenia enters into the sea at the foot of the Piran Bay in accordance with relevant provisions of the United Nations Convention on the Law of the Sea (hereinafter referred to as UNCLOS) concerning the delimitation of the territorial sea.

The Republic of Croatia would further like to stress the fact that the attempt to refer to the initialed text as a legal basis and an alleged proof of a direct territorial exit to the high seas of the Republic of Slovenia is invalid and unfounded. The Republic of Slovenia, by itself, in the past (in the 1993 Memorandum on Piran Bay) clearly stated that it considered itself a State in a geographically disadvantaged position with reference to its inability to proclaim an exclusive economic zone. In its Memorandum on the Piran Bay of 1993, in which it put forward its claim in respect of the delimitation issue with the Republic of Croatia, Slovenian Parliament confirmed the fact that the Republic of Slovenia belonged to those States which, because of their geographical position, are not entitled to proclaim an exclusive economic zone.

The Republic of Croatia rejects the assertion that Croatia has, in extending its jurisdiction and proclaiming the Ecological and Fisheries Protection Zone, in any way violated international law, and that it has not respected the rights of the neighboring countries. The Republic of Croatia has the honour to reiterate that it has extended its jurisdiction over the area in front of its coast and adjacent to its territorial sea—to a portion of previous high seas in the Adriatic. The Ecological and Fisheries Protection Zone comprises the column of water above the continental shelf of the Republic of Croatia from the outer limit of its territorial sea seaward up to the outer limit allowed under general international law. The outer limit of the Ecological and Fisheries Protection Zone of the Republic of Croatia shall be determined (in accordance with article 74 of the UNCLOS) through delimitation agreements with the similar zones of those States whose coasts are opposite or adjacent to the Croatian coast, if they are entitled to and once they, too, will have extended their jurisdiction in accordance with international law.

This delimitation is however of no relevance to the Republic of Slovenia, with whom the Republic of Croatia should delimit its territorial sea in accordance with article 15 of the UNCLOS. This territorial delimitation related to quite different areas than those in which delimitation of the zones may take place, and is further to the north where land border between the Republic of Croatia and the Republic of Slovenia enters into the sea in the area of the Piran Bay. For better understanding of relevant geographical circumstances, a map was attached to the Note of the Permanent Mission of the Republic of Croatia to the United Nations No. 288/04 (attached herewith as well), which the Republic of Slovenia in its above-mentioned note refused to accept. It is not up to Slovenia either to accept or to refute the attached map of the Northern Adriatic. The map simply showed the geographical positions and circumstances of the northern part of the Adriatic, without any indication of the maritime border between the two countries whatsoever. Rejecting a mere geographical map with no maritime border marked, indicated primarily the genuine attitude of the Republic of Slovenia, not towards the delimitation issues but towards its geographical position. However, as properly observed by the Secretary-General in this year’s report, the UNCLOS was not meant to correct geographical circumstances, but to provide adequate remedies to the situations where states are at a disadvantage. To this end, the Republic of Croatia has always been and still is ready to respect the right to innocent

passage and not to impair in any way the transit to and out of Slovenian and Italian ports in the Northern Adriatic. Throughout the years of negotiation, the Republic of Croatia even offered a more liberal regime of passage (i.e. transit passage), as well as various fisheries regimes in order to meet the real interest of the Republic of Slovenia, but not at the expense of Croatian territory.

With respect to the implementation of the legal regime of the Ecological and Fisheries Protection Zone, the Republic of Croatia would like to recall, as notified to the Secretary-General of the United Nations by the Note of the Permanent Mission of the Republic of Croatia to the United Nations No. 280/04 of 2 July 2004, that Croatian Parliament, by its Decision on Amending the Decision on the Extension of the Jurisdiction of the Republic of Croatia in the Adriatic Sea of 3 June 2004, decided to implement the legal regime of the Ecological and Fisheries Protection Zone of the Republic of Croatia with regard to the member states of the European Union only after the conclusion of the fisheries partnership agreement with the European Community. With regard to all other States the implementation of the said regime had commenced on 3 October 2004.

The assertion that this Decision was again “a practice of unilateral withdrawing from jointly adopted positions and agreements” is absolutely without any ground. The Republic of Croatia would particularly like to stress that no agreement has ever been reached to the effect that Croatia would postpone the legal regime of the zone until a joint consensual solution is found. At the meeting of the State Secretaries of the Foreign Ministries of the Republic of Croatia, the Italian Republic, and the Republic of Slovenia, on 4 June 2004 in the presence of the European Commission, the Republic of Croatia communicated the already adopted decision of Croatian Parliament by which the regime of the Ecological and Fisheries Protection Zone of the Republic of Croatia will not be implemented with regard to the European Union member states until the partnership agreement in fisheries is concluded with the European Commission. The Agreed Minutes of the said meeting provide the record of the meeting at which the participants gave their statements and expressed their views and readiness to continue to work together in the EU spirit.

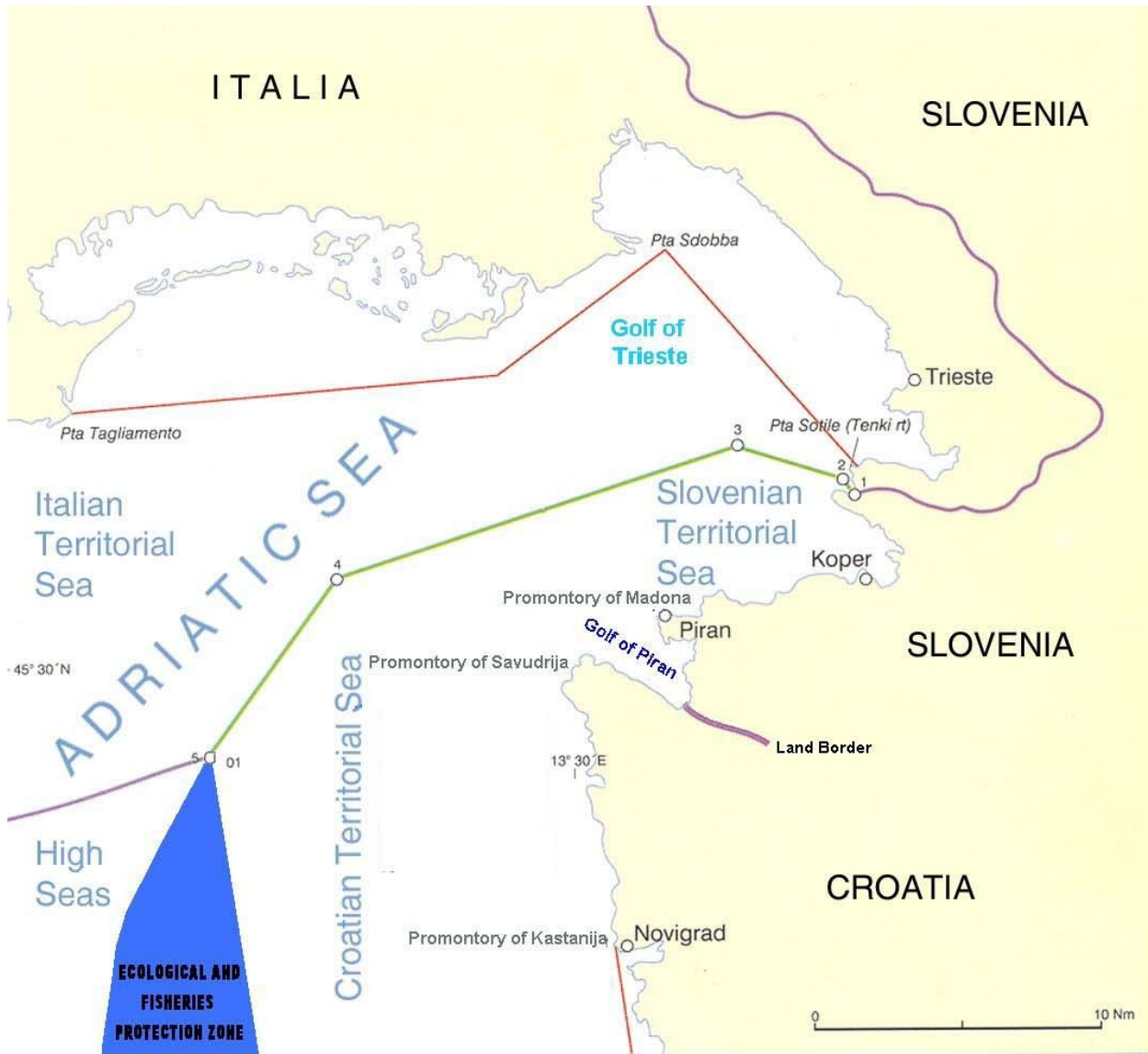
The unilateral interpretation of the Government of the Republic of Slovenia on its “understanding” of the above-mentioned Decision of the Croatian Parliament is of no relevance, and can in no way affect the sovereign rights and jurisdiction of the Republic of Croatia in its implementation as well as in undertaking any other action or decisions which rests within the prerogative of the coastal state in the zone in which it extended its jurisdiction in accordance with international law.

With reference to the proposal of the Republic of Croatia put forward to the Republic of Slovenia to submit jointly the issue of delimitation at sea between the two states to an international judicial body so as to come to a binding decision with regard to this issue in accordance with international law, the Republic of Croatia has not received any response which would enable further steps to be taken in this direction. The Republic of Slovenia has ignored the general obligation of the States Parties to the UNCLOS to settle any dispute between them concerning the interpretation or application of the Convention by peaceful means in accordance with article 279, and in particular the means mentioned in article 286 of the UNCLOS. And has been avoiding to accept the aforementioned Croatian proposal.

Taking into consideration the provisions contained in the United Nations Convention on the Law of the Sea as well as the relevant facts, the Republic of Croatia can only regard the arguments presented in the note of the Permanent Mission of the Republic of Slovenia to the United Nations No. N-160/04 as being legally unfounded, and reject the assertions contained therein.

The Permanent Mission of the Republic of Croatia to the United Nations would highly appreciate it if the Secretary-General of the United Nations as the Depositary of the United Nations Convention on the Law of the Sea would circulate this note and the attached map to the States Parties of the Convention as well as publish them in the next edition of the “Law of the Sea Bulletin”.

The Permanent Mission of the Republic of Croatia to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest considerations.



3. Note verbale dated 24 February 2005 addressed to the Secretary-General concerning Turkey's objection to the Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone of 17 February 2003¹

The Permanent Mission of Greece to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to refer to Note No. 2004/Turkuno DT/4739 dated 2 March 2004 from the Permanent Mission of Turkey to the United Nations concerning Turkey's objection to the Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone of 17 February 2003.

In the aforementioned note Turkey claims that the "delimitation of the exclusive economic zone or the continental shelf in Eastern Mediterranean, especially in areas falling beyond the western parts of longitude 32° 12' 18", should be effected by agreement between the related States at the region based on the principle of equity".

Greece, as one of the "related States at the region", would like to reiterate its long-standing position that the delimitation of the continental shelf or the exclusive economic zone between States with opposite coasts (both continental and insular) should take place in accordance with the pertinent rules of international law on the basis of the principle of equidistance/median line. This is confirmed by widespread, long-standing State practice, including the recently adopted Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone.

The Permanent Mission of Greece to the United Nations would highly appreciate it if the Secretary-General publishes the content of the Note in the next "Law of the Sea Bulletin".

The Permanent Mission of Greece to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

¹ Note verbale from the Permanent Mission of Greece to the United Nations dated 24 February 2005.

III. OTHER INFORMATION

Corrigendum

For *Law of the Sea Bulletin* No. 54

Page 51, 5th line from the top of the page, the coordinates:

721 30 50.1856...

Should read:

74 30 50.1856...
