

13. Part XI, Section 4, sub-sections B and C shall be interpreted and applied in accordance with this Part.

14. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:*

- (a) four members from among States Parties, each of which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of the total world consumption, or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, at the time of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this category;
- (b) four members from among the eight States Parties which have made the largest investments in preparation for, and in the conduct of, activities in the Area, either directly or through their nationals;
- (c) four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;
- (d) six members from among developing States, representing special interests. The special interests to be represented shall consist of States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States; and
- (e) eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as

* The issue of whether the system of chambered voting in the Council should extend to the category in sub-paragraph (d) in addition to the categories in sub-paragraphs (a) to (e) requires further discussion.

a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and Western Europe and Others.

15. The provisions of Article 161, paragraph 1 of the Convention shall not apply.

16 (a) Decisions on questions of substance in the Council, except decisions governed by Article 161, paragraph 8(d) of the Convention, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority of the members in any one of the categories mentioned in paragraph 14(a), (b) or (c).

(b) The provisions of Article 161, paragraph 8(b) and (c) of the Convention shall not apply.

SECTION 4. REVIEW CONFERENCE

In the light of the present Agreement and the changed circumstances in respect of deep seabed mining since the Convention was adopted, and the changes in the approaches to economic issues, the provisions relating to the Review Conference in Article 155, paragraphs 1, 3 and 4 of the Convention shall not apply. Notwithstanding the provisions of Article 314, paragraph 2 of the Convention, the Authority may undertake at any time a review of the matters referred to in Article 155, paragraph 1 of the Convention. Amendments relating to Part XI shall be subject to the procedures contained in Articles 314, 315 and 316 of the Convention, provided that

- (a) the principles, regime and other terms of Article 155, paragraph 2 of the Convention shall be maintained and the rights referred to in paragraph 5 of that Article shall not be affected; and
- (b) amendments shall enter into force on a date determined by the Council by a three-fourths majority of the members present and voting, including a majority of members of each chamber of the Council at that time.

SECTION 5. TRANSFER OF TECHNOLOGY

1. Transfer of technology, for the purposes of Part XI, shall be governed by the provisions of Article 144 of the Convention and the following principles;

- (a) The Enterprise shall take measures to obtain the technology required for its operations on the open market or through its joint venture arrangements.
 - (b) If the technology in question is not available on the open market, the Authority may invite all or any of the contractors and their respective sponsoring State or States to cooperate with in facilitating acquisition of technology by the Enterprise or its joint venture, or a developing State or States seeking to acquire such technology on fair and reasonable commercial terms and conditions, including effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also fully cooperate with the Authority.
 - (c) States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes.
2. The provisions of Annex III, Article 5 of the Convention shall not apply.

SECTION 6. PRODUCTION POLICY

1. The production policy of the Authority shall be based on the following principles:
- (a) The rights and obligations relating to unfair economic practices under the General Agreement on Tariffs and Trade, its relevant codes and successor agreements, shall apply to activities in the Area.
 - (b) In particular, there shall be no subsidisation of activities in the Area except as may be permitted under the agreements referred to in subparagraph (a). Subsidisation for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (a).
 - (c) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such minerals or for imports of commodities produced from such minerals, in particular.
 - (i) by use of tariff or non-tariff barriers; and

- (ii) given by States Parties to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;
- (d) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated amounts of minerals that would be produced per year under that plan of work.
 - (e) In the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (a), States Parties which are parties to such agreements shall have recourse to the dispute settlement procedures of such agreements; and
 - (f) In circumstances where a determination is made under the agreements referred to in subparagraph (a) that a State Party has engaged in subsidisation which is prohibited or has resulted in adverse effects to the interests of another State Party and appropriate steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.
2. The principles contained in paragraph 1 shall not affect rights and obligations under any provision of the agreements referred to in paragraph 1(a), as well as relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.
3. The acceptance, by a contractor, of subsidies other than those which may be permitted under the agreements referred to in paragraph 1(a) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.
4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraph (a) to (d) may initiate dispute settlement procedures in conformity with paragraph 1(e) or (f).
5. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this Part. This shall include relevant rules, regulations and procedures governing the approval of plans of work.
6. The provisions of Article 162, paragraph 2(g), Article 165, paragraph 2(n), Article 151, paragraphs 1 to 7 and paragraph 9 and Annex III, Article 7 of the Convention shall not apply.

SECTION 7. ECONOMIC ASSISTANCE

1. The policy of the Authority to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:
 - (a) Developing land-based producer States whose economies have been determined to be seriously affected by production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority.
 - (b) The Authority shall establish an economic assistance fund from a portion of funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority, provided that the amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions, shall be used for the establishment of the economic assistance funds.
 - (c) The Authority shall provide assistance from the fund to affected developing land-based producer States, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes.
 - (d) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer States.
2. Article 151, paragraph 10 of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2(1), Article 162, paragraph 2(n), Article 164, paragraph 2(d), Article 171, paragraph (f) and Article 178, paragraph 2(c) of the Convention shall be interpreted accordingly.

SECTION 8. FINANCIAL TERMS OF CONTRACT

1. The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contract:
 - (a) The system of financial payments to the Authority shall be fair both to the contractor and to the Authority.

- (b) The rates of financial payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage.
 - (c) The system of financial payments may be revised periodically, in view of changing circumstances, however, they shall be applied in a non-discriminatory manner and they may apply retroactively to existing contracts only at the election of the contractor. Any subsequent change in the choice of the systems shall, however, be by agreement of the Council.
 - (d) While the system should not be complicated and should not impose major administrative costs on the Authority or on a contractor, consideration should be given to the adoption of a royalty system or a combination of a royalty and profit sharing system. If alternative systems are decided upon the choice of the system applicable to an individual contract shall be at the election of the contractor. However, any subsequent change of system shall be by agreement of the Council.
 - (e) An annual fixed fee shall be payable from the date of commencement of commercial production. However such fee may be credited against other payments due under the system adopted in accordance with subparagraph (d). The amount of such fee shall be established by the Council.
 - (f) Any disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures under the Convention.
2. The provisions of Annex III, Article 13, paragraphs 3 to 10 of the Convention shall not apply.
3. With regard to the implementation of Annex III, Article 13, paragraph 2 of the Convention, the fee for processing applications for the approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be \$250,000.

SECTION 9. THE FINANCE COMMITTEE

1. There is hereby established a Finance Committee. The Finance Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate

candidates of the highest standards of competence and integrity. In the election of members of the Finance Committee, due account shall be taken of the need for equitable geographical distribution and the representation of special interests. Until the Authority is self-financing, the membership of the Committee shall include the five largest financial contributors to the administrative budget of the Authority.

2. No two members of the Finance Committee shall be nationals of the same State Party.
3. Members of the Finance Committee shall be elected by the Assembly. Each category referred to in Section 3, paragraph 14(a), (b), (c) and (d) of this Annex shall be represented on the Finance Committee by at least one member. After the Authority becomes self-financing, the election of one member from each category shall be on the basis of nomination by the members of the respective category, without prejudice to the possibility of further members being elected from each such category.
4. Members of the Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.
5. In the event of death, incapacity or resignation of a member of the Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or interest group.
6. Members of the Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.
7. Decisions by the Council and the Assembly on the following issues shall take into account recommendations by the Finance Committee:
 - (a) Draft financial rules, regulations and procedures of the various organs of the Authority and the financial management and internal financial administration of the Authority.
 - (b) Assessment of contributions of members to the administrative budget of the Authority in accordance with Article 160, paragraph 2(e) of the Convention.
 - (c) All relevant financial matters including the proposed annual budget prepared by the Secretary-General (Article 172 of the Convention), the financial aspects of the implementation of the programmes of work of the Secretariat.

- (d) The Administrative budget.
 - (e) Financial obligations of States Parties arising from the operation of Part XI and its related annexes as well as the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority.
 - (f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits and the decisions to be made on that basis.
8. Recommendations of the Committee shall, where necessary, be accompanied by a summary of the range of opinions in the Committee.
 9. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus.
 10. The requirement of Article 162, paragraph 2(y) of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this Section.

IV. Status and Treatment of Refugees

(i) Introduction

At the instance of the Government of the Arab Republic of Egypt, the subject 'Status and Treatment of Refugees' was first taken-up for study by the AALCC in 1963. It was observed that the AALCC's views would be invaluable in reflecting upon the refugees problem. Since then the Committee has regularly been taking-up this subject at its annual sessions and discussing the progress of work in this field.

The Thirty-first Session (1992) mandated the Secretariat to commence preparation of a draft model legislation on refugees. The topic was taken-up at the Thirty-second Session held in Kampala (1993). The following two studies prepared in accordance with the mandate were presented for consideration of the Thirty-third Session held in Tokyo in January 1994.

- A. Model legislation on the Status and Treatment of Refugees.
- B. Establishment of "Safety Zones" for the Displaced Persons in the Country of Origin.

A. MODEL LEGISLATION ON THE STATUS AND TREATMENT OF REFUGEES

The Asian-African Legal Consultative Committee at its Twenty-eighth Session held in Nairobi in 1989 decided to organise a workshop on the refugee problems in Afro-Asian region with the Cooperation of and in association with the office of the United Nations High Commissioner for Refugees (the UNHCR) to commemorate Twenty-Five years of Working relationship between the two organisations. In fulfillment of that mandate the Secretariat of the Committee and the UNHCR conjointly organised a Workshop on 'International Refugees and Humanitarian Law' in the Asian-African Region in New Delhi in October 1991. The Workshop had as its

objectives the promotion of general awareness and wider acceptability, among the member States of the Committee, of the Geneva Convention in Relation to the Status of Refugees, 1951 and the 1967 protocol thereto. Two recommendations were made by that Workshop. The first one urged the Committee "to consider the possibility of preparation of a model legislation with the objective of assisting Member States in the enactment of national laws on refugees". The other recommendation urged the Asian-African States to move a step forward by considering adherence to the 1951 Convention relating to the Status of Refugees and/or the 1967 protocols, thereto.

The Committee at its Thirty-first Session adopted the recommendations of the AALCC-UNHCR Workshop on International Refugees and Humanitarian Law in Asian-African Region held in New Delhi in October 1991 and approved of the suggestion to prepare a model legislation in cooperation with the office of the UNHCR with the objective of assisting Member States in enacting appropriate national legislation on refugees.

At its Thirty-second Session in Kampala, in early 1993, the Secretariat prepared a study entitled "Preliminary Study on the proposed Model Legislation on Refugees". This brief sought to present an overview of the features of contemporary refugees law and also incorporated a draft structure of the proposed model legislation on refugees.

At that Session the representative of the UNHCR observed that the initiative taken by the Committee in preparation of a model legislation on refugees would certainly contribute to the effective implementation of refugee law at this juncture of history of international relations. In his view the incorporation of international standards for treatment of refugees into national law through domestic legislation would be an appropriate method and in some legal systems, perhaps, the only method. He recalled that during the Arusha Conference on Refugees held in 1979 the African States had recommended that the OAU in cooperation with the UNHCR should elaborate a national legislation to serve as a guideline for African States. He also reiterated the UNHCR's offer to cooperate with and assist the Secretariat of the AALCC in the elaboration of a Model Legislation on Refugees.

The Committee at its Thirty-Second Session decided *inter alia* to "continue with the study of the model legislation in close cooperation with the UNHCR and OAU which includes study of various legislations on refugees in the Asian-African region".

Pursuant to that decision the Secretary-General held informal consultations with the representatives of the Organization of African Unity (OAU) as well

as the UNHCR, at Addis Ababa during February 1993. At that meeting it was agreed (i) to reactivate the OAU/UNHCR Working Group on refugees and to include therein the AALCC and (ii) to reactivate the Study of a Model Legislation. Thereafter another round table meeting of the representatives of the AALCC and the UNHCR was held in Geneva in June 1993. The focus of discussions at that meeting was the proposed model legislation on refugees. During that tripartite meeting it was observed that the model legislation would be much more meaningful if it were incorporated into national laws. It is because these are far more effective domestically than international law principles which may lack enforcement procedures. It was also observed that the lack of willingness to accept international standards has been well illustrated by the unfortunate Bosnian example, which has shown that International Protection and non-refoulement has at best been reduced to good intentions. The national legislation would be more respected:

- (i) since being law of the land, there were better chances of its implementation;
- (ii) also for fear of international criticism; and
- (iii) national as well as international public opinion.

The question of incorporation of existing principles could be left to the individual states. Therefore, a national legislation, keeping all the factors in mind would also be useful. Of-course, the question of incorporation of the existing principles could be left to individual states.

In the end it was agreed among other things to :

- (i) Form an inventory of all the legislations available with the UNHCR CDR division :
- (ii) Evolve ways and means of elaborating the 1966 Bangkok Principles; and to
- (iii) Continue work on the model legislation which would help states desirous of doing so to incorporate flexible principles on refugees into their existing legal instruments.

The Secretary-General also held consultations with several senior representatives of the office of the UNHCR. At the meeting between the Secretary-General and the representatives of the UNHCR held in Geneva on the afternoon of June 3, 1993 it was agreed to make an inventory of all existing legislation with CDR (Geneva) and if possible to continue to study further the Report of Dr. Faits Abdel Majeed on his mission to Egypt, Lebanon, Jordan, Iraq and Yemen, with the idea of identifying Islamic Law principles which could help in promoting existing principles of refugees.