



ANTARCTIC TREATY

Final Report of the Fourth Special Antarctic Treaty Consultative Meeting on Antarctic Mineral Resources

Adopted at Wellington, 2 June 1988

New Zealand
Ministry of Foreign Affairs

FINAL REPORT OF THE
FOURTH SPECIAL ANTARCTIC TREATY CONSULTATIVE MEETING
ON ANTARCTIC MINERAL RESOURCES

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CONTENTS

	<u>Page</u>
FINAL REPORT	3
ANNEXES	
A Statements by Delegations on the Adoption of the Convention	6
B Final Act	36
C Convention on the Regulation of Antarctic Mineral Resource Activities	43
D Delegation List	114

FINAL REPORT OF THE FOURTH SPECIAL ANTARCTIC TREATY
CONSULTATIVE MEETING ON ANTARCTIC
MINERAL RESOURCES

The Fourth Special Antarctic Treaty Consultative Meeting on Antarctic Mineral Resources was convened in accordance with Recommendation XI-1 adopted by the Antarctic Treaty Consultative Parties at Buenos Aires in July 1981.

2 The Special Consultative Meeting began its work at Wellington from 14 to 25 June 1982 and was attended by Representatives of the 14 Antarctic Treaty Consultative Parties at that time, namely Argentina, Australia, Belgium, Chile, France, Federal Republic of Germany, Japan, New Zealand, Norway, Poland, South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, and United States of America. Mr Christopher Beeby, Representative of New Zealand, was elected as Chairman.

3 Further sessions were held as follows:

Wellington, 17 to 28 January 1983
Bonn, 11 to 22 July 1983
Washington DC, 18 to 27 January 1984
Tokyo, 23 to 31 May 1984
Rio de Janeiro, 26 February to 8 March 1985
Paris, 23 September to 4 October 1985
Hobart, 14 to 25 April 1986
Tokyo, 27 October to 12 November 1986
Montevideo, 11 to 20 May 1987
Wellington, 18 to 29 January 1988.

4 All sessions were attended by Representatives of the Antarctic Treaty Consultative Parties mentioned in paragraph 2 above. Representatives of Brazil and India (from the session held in Washington in January 1984), China and Uruguay (from the session held in Hobart in April 1986), and the German Democratic Republic and Italy (from the session held in Wellington in January 1988) also participated as Consultative Parties.

5 Following the decision taken at the Twelfth Antarctic Treaty Consultative Meeting held in Canberra in 1983 that delegations of Contracting Parties to the Antarctic Treaty that are not Consultative Parties, may be invited to attend Consultative Party meetings as observers, it was

decided at the session in Tokyo in May 1984 to extend this decision to the meetings on Antarctic Minerals. Accordingly, invitations to attend the negotiations were extended to such Contracting Parties from the session held in Rio de Janeiro in February/March 1985. In accordance with such invitations delegations from Austria, Bulgaria, China, Cuba, Czechoslovakia, Denmark, Ecuador, Finland, German Democratic Republic, Greece, Hungary, Italy, Republic of Korea, Netherlands, Papua New Guinea, Peru, Romania, Spain, Sweden and Uruguay attended various sessions of the negotiations.

6 The final session of the Fourth Special Antarctic Treaty Consultative Meeting was held at Wellington from 2 May to 2 June 1988. It was opened by Hon Russell Marshall, Minister of Foreign Affairs and Minister of Disarmament and Arms Control of New Zealand. Mr Christopher Beeby of New Zealand was elected as Chairman.

7 Representatives of all the Consultative Parties, namely Argentina, Australia, Belgium, Brazil, Chile, China, France, German Democratic Republic, Federal Republic of Germany, India, Italy, Japan, New Zealand, Norway, Poland, South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay participated in the session. On the invitation of the Consultative Parties, Representatives of 13 Contracting Parties to the Antarctic Treaty that are not Consultative Parties, namely Bulgaria, Canada, Czechoslovakia, Denmark, Ecuador, Finland, Greece, Republic of Korea, Netherlands, Papua New Guinea, Peru, Romania and Sweden, also participated in the session.

8 Consultations were held under the auspices of the Chairman to advance work on key aspects of the informal negotiating text that had been under negotiation at previous sessions (MR/17 and its subsequent revisions I to V/Corr.1). A Main Committee, open to participation by all delegations, was established under the Chairmanship of Mr Rolf Trolle Andersen of Norway, to review particular aspects of the text and to consider proposals for amendments.

9 The Drafting Committee, comprising representatives from Argentina, Brazil, Chile, China, France, Federal Republic of Germany, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and the United States of America and under the Chairmanship of Mr Orlando R. Rebagliati of Argentina, continued the work it had begun at the session in Wellington in January 1988 to review drafting issues in the text and to ensure the concordance of the text in the official languages of the Antarctic Treaty.

10 At the conclusion of the session the Representatives of the Consultative Parties adopted by consensus, in the four official languages of the Antarctic Treaty, the Convention on the Regulation of Antarctic Mineral Resource Activities, and, together with the Representatives of the Non-Consultative Parties participating in the final session, signed the Final Act of the Fourth Special Antarctic Treaty Consultative Meeting on Antarctic Mineral Resources to which the Convention is annexed.

11 Statements made by Representatives upon the adoption of the Convention are annexed to this report.

12 The Representatives expressed their gratitude to the Government and people of New Zealand for hosting the Meeting and to the Chairman, Mr Christopher Beeby, and the members of the New Zealand delegation and the Secretariat for their assistance in making the Convention possible.

13 The Meeting agreed that the Convention would be opened for signature at Wellington on 25 November 1988.

STATEMENTS BY DELEGATIONS
ON THE ADOPTION OF THE CONVENTION
ON THE REGULATION OF
ANTARCTIC MINERAL RESOURCE ACTIVITIES

STATEMENT BY MR XU GUANGJIAN, HEAD OF DELEGATION, CHINA

Mr Chairman

First of all, please allow me, on behalf of the Chinese delegation, to extend to you and the Plenary our warm congratulations on the final adoption of the Convention on the Regulation of Antarctic Mineral Resource Activities. It has been through our tremendous joint efforts and in the spirit of cooperation that we have finally reached our common goal. Therefore, the adoption of this Convention is really worth celebrating. I would like to mention on this occasion, Mr Chairman, the personal contribution you have made ever since 1982 through all those long and tough negotiations you conducted with exceptional wisdom, efficiency and great patience, without which it would have been impossible to get so great a success today, and for which we are very grateful.

Meanwhile, Mr Chairman, I would like to avail myself of this opportunity to extend our appreciation to the distinguished gentlemen and ladies who have also made great contributions to the final success of our Meeting, in particular to Rolf Andersen, Orlando Rebagliati, Ruediger Wolfrum, Mary Chamberlin, and Tim Caughley. I would also like to thank the New Zealand Government and the New Zealand delegation for their hospitality, and to thank all the staff of the Secretariat, the interpreters and the translators for their excellent service.

We sincerely wish the adoption of this Convention will be justified by history itself. In this regard, I should say that all State Parties to the Antarctic Treaty shall bear a collective and sacred responsibility for implementing this Convention to which we are all committed.

Finally, I would like to say "goodbye" to you, Mr Chairman, and all my friends here. We are looking forward to seeing you again after the headquarters of the Commission has been established in this beautiful country - New Zealand.

Thank you very much, Mr Chairman.

STATEMENT BY MR JEAN-PIERRE PUISSOCHET, HEAD OF
DELEGATION, FRANCE

Mr Chairman; dear colleagues and friends,

At the end of five weeks of long, arduous and difficult negotiations, the Consultative Parties and all the participants to this Conference have just completed the work which began six years ago in this very capital, and under your authority, Mr Chairman. The work took six years, but its foundations can be traced still further back in time if one considers that it was on the occasion of a Special Meeting held in Paris in September 1976 that the Consultative Parties decided to examine closely an issue that the Treaty of Washington had neglected: that of the exploitation, in the interest of all, of Antarctic mineral resources.

The texts we have just adopted represent a happy balance between concern for the protection of the environment and the wish to allow, if it ever becomes necessary and possible, a reasonable exploration and exploitation of Antarctic mineral resources.

A triumph of legal ingenuity for conciliating divergent positions on fundamental points, the completion of our work is also shining proof of the efficiency of the Antarctic system, and the possibility it has to evolve dynamically according to the challenges of our time and, as far as the Parties to the Treaty are concerned, the opportunity to assume their highest responsibilities before the world.

As a State claiming sovereignty, France finds in this Convention an application of the main Antarctic principles, and in particular considers that the Convention preserves all the principles set forth in Article IV of the Treaty, the fundamental basis of the Treaty.

It is our wish that the Convention on the Regulation of Antarctic Mineral Resources, the text of which we have just adopted, will enter very shortly into force and, consequently, that the period which separates us from its application is as short as possible. Of course we agree with the necessity of the moratorium included in the Final Act which takes up and confirms Recommendation IX-1, which has in fact become an essential component of the Antarctic system. This provisional regime should not last any longer than necessary. From this point of view, the

French Government considers that, where the Final Act refers to a "timely" entry into force, this phrase is to be understood by reference to the reasonable period which has generally separated, and should separate, the date of the signing of a Convention within the Antarctic system from the date of its entry into force.

On this day of celebration, let me tell you, Mr Chairman, that had it not been for your dynamism, your understanding of the situation, your diplomatic sense and your courteous authority, perhaps there would not, or not yet, be any Convention. The achievement we are sealing today is to a large degree your achievement. The French Delegation wishes to thank you for it, and also wishes to thank the Government of your country for the generous welcome given to this Conference.

We return to our countries satisfied with the results obtained, and satisfied with the method followed: that of consensus. It is sometimes long and difficult; but it enables each one to proceed gradually from the desirable to the possible, and it has the invaluable effect of strengthening the sense of solidarity between our States. Nothing is more fortunate, and nothing is more promising.

Thank you, Mr Chairman.

STATEMENT BY MR ARTHUR WATTS, HEAD OF DELEGATION, UNITED KINGDOM

Mr Chairman

It is with a sense of relief that I find myself taking the floor on this occasion. It has been a long time since we first met here in Wellington almost six years ago: and at times it has seemed an even longer haul than that. There have been times when it looked as though we had set ourselves an impossible task. That we have in the event today been able to agree upon a final report and a Final Act adopting the Convention on the Regulation of Antarctic Mineral Resources is due to the willingness of all delegations to put the interests of Antarctica above their more narrow national interests.

We must now all go home and consider carefully whether we can sign the Convention which we have today adopted, and in due course ratify it. It may be that when we come to signature and ratification we may feel it necessary to attach to our signature or instruments of ratification statements or declarations of various kinds, although not of course any which amount to reservations. I will not, therefore, on this occasion attempt to forecast the kind of statements or declarations, if any, which the United Kingdom may feel it necessary to make on those later occasions. There are, however, one or two matters to which it is only right for me to refer briefly on this occasion.

First, it has been of the utmost importance to all of us, and to my delegation in particular, to have a clear idea of the area of application of our Convention. This has proved a very difficult subject to settle satisfactorily. We began detailed discussion of it at the second round of negotiations in January 1983, and it has only been at this final round - and at a fairly late stage in the round at that - that we have finally been able to arrive at a solution satisfactory to all delegations. Some very difficult issues have had to be tackled, and I believe that all delegations deserve our collective thanks for the spirit in which they have approached this problem. The result has been a clear agreement that Antarctic mineral resource activities conducted within the area described in Article 5(2) can only take place in accordance with the provisions of this regime. We do not believe that it prejudices the question of mineral activities south of 60° South but outside that special area.

Taking a broader view of the outcome of our negotiations, we have all had to come to a number of difficult accommodations throughout the regime. The interests involved have been diverse. By now, we all know them very well. A number stand out as being of particular importance. There has been the interest of the States which do not recognise claims to sovereignty in Antarctica, and who have had strong reservations about anything in the regime which admits any special position for the claimant States. There have been the interests of the developing countries, which have grown in number during our negotiations, and the interests of those States which, might expect, in the far distant future, to be more likely to have Operators interested in the high risk venture of conducting mineral resource activities in Antarctica. There has also been the direct interests of the relevant claimant States in the claimed areas of Antarctica, an interest which is for each of those States the most direct interest in the particular area over which it asserts or claims sovereignty.

The problems arising from the existence of these assertions of and claims to sovereignty have from the outset been among the most important and sensitive in these negotiations: in some respects they have dominated them. The outcome has all along had to be one which, both in substance and in form, struck a balance between those divergent views. This is not the occasion for an analysis of how that balance has been struck in the Convention, although I would just mention the cardinal importance for all delegations of Article 9 of the Convention and of its parent provision in Article IV of the Antarctic Treaty. Let me, rather, simply say that, in the view of my delegation, a balance has been struck which is at least sufficiently acceptable to have allowed us to proceed to the adoption of the Convention.

In this general context, however, there is one particular matter to which I must refer. Throughout these negotiations my delegation - like many others - has been very conscious of the problems created by the fact that in a part of Antarctica the territorial claims of the United Kingdom, Argentina and Chile overlap each other, totally or partially. The effective operation of the regime requires that various practical problems associated with these overlapping claims be satisfactorily resolved between the three States. To that end, during these negotiations the three delegations, acting within the framework of Article IV of the Antarctic Treaty and bearing in mind also Article 9 of the Convention which we have just adopted have exchanged views informally on certain aspects of the proposed Convention related to the area of our countries' overlapping claims to territorial sovereignty. My delegation intends, exclusively for the purpose of facilitating the application of the Convention

in that area, to continue such exchanges with representatives of Argentina and Chile. By such means we expect that the three States will be able to ensure that, when the Convention enters into force and becomes fully operational, it will do so effectively and harmoniously, and in full accord with the objectives and principles which underlie it. My delegation must state that neither the informal exchanges which have taken place between the three delegations concerned, nor any future exchanges between us in this context, are to be construed as a diminution by the United Kingdom of its asserted rights of territorial sovereignty in Antarctica or to the exercise of coastal state jurisdiction in Antarctica, or as prejudicing its rights, or as recognition of or support for the position of either or both of the other two States with regard to territorial sovereignty or coastal state rights and jurisdiction in Antarctica.

With those thoughts, Mr Chairman, my delegation begins the process of looking forward to the future effective operation of the Convention which we have just adopted. We are all aware that no assumptions can be made about the success of that future. We shall have to continue to work as hard for a successful future as we have worked for a successful Convention. If we continue to put the interests of Antarctica first, and in particular the interests associated with the protection of its incomparable environment, I have no doubt that the work which we have begun over these last six years will serve our various States well through the decades ahead. The secret of the Antarctic Treaty system is that we exercise forbearance. If any of us pushes to the extreme positions which we hold, the system will cease to work. It is only by forbearance in that respect that the system can survive. We have all exercised that forbearance during these negotiations, for which my delegation wishes to express its thanks to all other delegations. It will only be by continuing that forbearance that the Antarctic Treaty system will continue to serve our common interest in the wellbeing of Antarctica throughout the years ahead.

Before the future begins, however, I should like to make one or two closing remarks about the past. In particular, I should like to record the debt of gratitude which my delegation feels for all those who have worked so hard, particularly behind the scenes, to make our work a success. I have in mind particularly the interpreters and translators, the members of the Secretariat who, we know, have worked very hard and efficiently, and who, I suspect, have worked even harder and more efficiently than we can even begin to realise. I should like also to make it clear that I am not just referring to those who have fulfilled those functions at this final meeting but also those who have served us so marvellously at all our previous rounds of negotiations. At this moment the

Government of New Zealand is perhaps foremost in our minds, but I should like to recognise also, with enormous gratitude, the part played by those other Governments which were generous enough to agree to host one or more rounds of these negotiations, that is the Governments of the Federal Republic of Germany, United States of America, Japan, Brazil, Australia, France and Uruguay. To them, and to all the supporting staff at those meetings, we add our thanks for the part they played in our common task.

Which brings me, finally, to where we started six years ago - to New Zealand. The Government of New Zealand have taken it upon themselves to offer us all the benefit of the resources at their disposal to enable these negotiations to take place and to be continued through to today's successful conclusion. Throughout those six years the Government of New Zealand have earned not only our thanks for the efficiency with which they have arranged for our meetings to be conducted but also for having allowed us the privilege of visiting this beautiful country. For many of us it has become almost a second home. They have also put at our disposal a team of the most able and dedicated officials it has been my privilege to work with. Without in any way diminishing the accolade I award them, I must single out the service which you yourself have rendered to the success of these negotiations. I will spare your blushes by saying no more on that subject, other than to express, through you, our thanks to the Government of New Zealand for all they have done, and to you personally for the role you have played in ensuring the successful outcome to our work.

STATEMENT BY AMBASSADOR FERNANDO ZEGERS, HEAD OF DELEGATION, CHILE

Mr Chairman

In the exercise of the right conferred by Article 63 of the Convention, the Delegation of Chile wishes to assert, once more, its rights of sovereignty in Antarctica, including its territorial sovereignty and sovereign rights over the maritime spaces appurtenant, in conformity with Article IV of the Antarctic Treaty and Article 9 of the present instrument.

Regulation of the uses and activities not provided for expressly in this Convention, in the Antarctic Treaty, the measures in effect under that Treaty, and its associate separate legal instruments to which Chile is a Party, falls within the jurisdiction of the Chilean State and its Antarctic Province.

The Delegation of Chile believes that it is appropriate and timely to make references to related matters which could emerge under the Convention which we are about to approve.

Some practical problems could arise in the operation of the regime in areas of Antarctica where Chile has asserted and asserts territorial rights to Antarctica and where the claims by other States, namely Argentina and the United Kingdom, overlap with our assertion of rights.

In order to meet those practical requirements, informal contacts have been established among the interested parties, acting within the framework of Article IV of the Antarctic Treaty and bearing in mind also Article 9 of this Convention.

My delegation proposes to continue, within such a framework, those contacts with a view to facilitate the operation of the Convention once it enters into force in a harmonious and effective manner and in full accordance with its objectives and principles. For that purpose we are certain that timely understandings among the above referred interested parties will be in place.

Nothing in these past or future contacts and consultations may be construed as a diminution or renunciation by Chile of its asserted rights to territorial sovereignty in Antarctica or to the exercise of coastal State sovereign

rights, rights and jurisdiction in Antarctica, or as prejudicing its rights or as recognition of or support for the position of the other States concerned with regard to territorial sovereignty in Antarctica.

In the context also of Article 63, my delegation must state that its approval of this Convention is given with the precise understanding that follows.

The Government of Chile shall take the necessary steps to harmonise the provisions of this Convention and its internal constitutional and legal order, in such a manner so as not to contradict or impair that juridical system and, at the same time, not to contradict and as appropriate give effect to the above mentioned provisions.

Within the same context, my delegation wishes to record its interpretations of other aspects of the Convention on the Regulation of Antarctic Mineral Resource Activities.

This Convention, in accordance with Article 2, is an integral part of the Antarctic Treaty system, and in conformity with the special legal and political status of Antarctica, it shall provide a regime to regulate Antarctic mineral resource activities consistent with Article IV of the Antarctic Treaty, as well with the general principles and purposes of that Treaty. It is a valuable contribution to a system which has demonstrated effectiveness in promoting international harmony in furtherance of the purposes and principles of the United Nations, in promoting freedom and cooperation in the realm of science, and protecting the unique Antarctic environment and its dependent and associated ecosystems.

The unique character of the Antarctic environment as well as the legal and political balance of the Antarctic Treaty system are preserved under this regime by the consensus or absence of any formal objection which is required for the identification or opening of an area.

The Convention refers to its area of application in Article 5 and related provisions.

In this respect, it is our understanding in conformity with paragraph 2 of that Article that Antarctic mineral activities shall be regulated in what we deem to be the appurtenant continental shelf to the territory in which we assert sovereignty in Antarctica. This continental shelf extends both in distance and geomorphology north of 60° South latitude, and shall be fully covered by the regime. Such is the effect of Article 5(2) taken in conjunction with the relevant paragraph of the Final Act which we are signing today.

It is also the understanding of the Delegation of Chile that the application of the Convention to the area south of 60° South of latitude and the special responsibilities of the Antarctic Treaty Consultative Parties therein do not mean or intend to mean further regulation or prohibition of mineral activities beyond the area described in Article 5(2).

It is further clear under the same Article that the Convention will regulate the effect that mineral activities may have on dependent or associated ecosystems.

As to the entry into force of this instrument, it is our understanding that it will require the ratification of all the seven States which, in conformity to Article IV of the Antarctic Treaty, assert rights to territorial sovereignty in Antarctica.

The Delegation of Chile further understands that the Protocol on Liability which we are all engaged to negotiate, shall give full effect to the commitment expressed in paragraph 7(b) of Article 8 in order that it shall be designed to enhance the protection of the Antarctic environment and dependent and associated ecosystems.

Finally, it is our understanding of the whole structure of the Convention and several of its provisions, that nothing therein legally impedes or affects the arrangements which may be negotiated by relevant claimants to give effect to the economic benefit to which they are entitled in relation to their respected claim in areas, in accordance with Article 35 of this Convention.

The preceding understandings confirm the acceptance that Chile gives to the Convention on the Regulation of Antarctic Mineral Resource Activities as an instrument of great importance, which tends to reinforce and complete the Antarctic Treaty system.

STATEMENT BY MR GUSTAVO TEIXEIRA, HEAD OF DELEGATION, PERU

Mr Chairman,

The Delegation of Peru would like to express its gratitude to the Consultative Parties which have made it possible for Non-Consultative delegations to be present as observers at the negotiations since the 1985 meeting at Rio. I would also like to indicate that my Government will have to examine thoroughly the adopted Convention in order to submit it to the proceedings of our own national legislation which will lead to it being signed and ratified at the right moment.

Moreover I wish to show our gratitude for the professional work of the Secretariat, that of the translators and interpreters, and very especially that of Ambassador Beeby for his ability to lead this Conference which brought us together for five weeks with the results we are assessing today, leading us to sign this historic document.

Lastly I wish to express our appreciation for the hospitality and kindness offered to the Delegation of Peru in this beautiful capital of New Zealand, and I request you to pass this on to your Government.

Many thanks.

STATEMENT MADE MR ADRIAAN BOS, HEAD OF DELEGATION, THE NETHERLANDS

Mr Chairman

The Netherlands has taken part in the negotiations as an observer. In the past plenty of scope was allowed for contributions of observers in the course of the negotiations. The content of the message mattered more than the identity of the messenger. It was therefore disappointing that at the moment when the procedures for this conference were established the Non-Consultative Parties to the Antarctic Treaty were denied full participation in the adoption of the Treaty and that they are excluded from the final decision. Among other things it has had as a consequence that we did not participate here in Wellington in the final negotiations concerning the hard core issues. Without the knowledge why texts have been changed and why interpretative declarations have been inserted in the Final Act, it is difficult for us to give a balanced judgment on the final text.

Moreover, we are convinced that if the Non-Consultative Parties had expressly agreed to the adoption of this Convention, this would not only have been an obvious support for the Treaty system, it would also have made it easier to defend this Convention to the outside world.

Let me sum up the position of my delegation in relation to the last version of the text. We are disappointed that in several places in the text a distinction is made between Consultative and Non-Consultative Parties with regard to subjects which are clearly of equal interest to Consultative and Non-Consultative Parties of the Antarctic Treaty. I mention in this respect Articles 2(3), 6, 10(2), 13(6), 34, 41(1)(d) and 43(2)(e).

Speaking about the role of the Non-Consultative Parties under this new Convention, we remain convinced that it would have been better if all the present Parties to the Antarctic Treaty would be engaged in the identification of an area. One cannot ignore that the protection of the environment of Antarctica is a concern for all. In the view of our delegation the rules concerning the membership of the Commission are contradictory. On the one hand they give weight to the fact that a Party is Party to the Antarctic Treaty. On the other hand, however, the text contains additional rules for becoming a member of this new Commission. Since the basis for membership, "active engagement in substantial scientific, technical or

environmental research in the area" is the same, there is in our view no room for a negative decision of the Commission if those requirements are fulfilled. In general we would have preferred the condition that a State has to be Party to both the Antarctic Treaty and this Convention. Such a condition would better reflect the present state of affairs in Antarctica in which the Antarctic Treaty system is more and more treated as a whole.

With regard to the provisions concerning the protection of the environment, we recognise that there is a good basis for decision making in the Articles containing the objectives and principles. However, we have been - and still remain - concerned about the reluctance to adopt more specific and concrete obligations in other parts of the Convention.

For instance, we regret that it has not been possible to elaborate a comprehensive and satisfactory set of rules governing liability in the text of this Convention. Also, we believe that if the objectives and principles are to be the touchstones of the Convention, there should not have been as much resistance as we have seen to Commission review of Regulatory Committee's decisions or to the possibility for observers to attend meetings of the Regulatory Committees.

Mr Chairman, you may remember that in our statement at last week's Plenary meeting we advocated the elaboration and adoption of an Antarctic Conservation Strategy within the framework of the Antarctic Treaty. Now, at the end of these negotiations, we repeat this plea and wish to add that in our opinion there should be a firm commitment by all Parties to an effective moratorium on minerals activities until the Conservation Strategy is in place and the Minerals Convention comes into force. We consider the Articles concerning the settlement of disputes between States as satisfactory.

We regret that in the present text too little is offered to the outside world in relation to potential benefits to be derived from mining activities. In our view it is not sufficient to leave it to the Commission to decide unanimously according to Article 21(2) upon the disposition of funds. We would have preferred a clear commitment in the text of the Contracting Parties, that if a surplus occurs, such a surplus be set aside for the benefit of mankind.

We would also have preferred a more elaborated supervisory role of the Commission in the text, especially in cases where the Commission acts to review decisions of Regulatory Committees according to Article 49.

It remains doubtful in the view of our delegation whether the area of application as defined in Article 5, together with the interpretative declaration in the Final Act, can be considered to be in conformity with the existing applicable rules of international law.

This, Mr Chairman, was a summary of the Dutch position. Let me conclude by expressing our admiration for the way you have presided over our meetings.

During my stay in New Zealand I discovered a native tree, called the kauri. It is firmly rooted in the soil and it has very hard wood. You have been like that tree. As in windy Wellington, winds sometimes blew hard in this conference, but you remained well-rooted and upright and survived any storm by presenting new versions of the text, which became almost as numerous as the leaves of the kauri.

I would finally also like to express our gratitude to all other officers, who have played such an important role to bring this conference to a successful conclusion.

Thank you.

STATEMENT BY MR KENSAKU HOGEN, HEAD OF DELEGATION, JAPAN

Mr Chairman

I would like to join the previous speakers in congratulating you for having successfully fulfilled your task as Chairman of the Fourth Special Consultative Parties Meeting to elaborate and adopt the Convention on the Regulation of Antarctic Mineral Resource Activities.

It is with deep respect and admiration that we have looked upon you as you have chaired successively, for the past six years, many difficult negotiations. We are therefore more than anyone else happy and relieved to see that your work has finally culminated in the new legal framework which we have adopted today.

My delegation is also grateful to all delegations which have untiringly and strenuously worked together on drafting the Convention.

I would also like to express my delegation's sincere appreciation for the efficient and reliable work by the staff of the Secretariat, including interpreters and translators, to assist us in our endeavours; without their dedicated help we would not have been able to achieve the result we now have.

Mr Chairman, it is of course somewhat premature to state our definite assessment on the substance of the Convention.

However, I have, as you remember, stressed, at the outset of this meeting, the need for balance, workability and safeguards in the new regime.

During the last days of intensive negotiations, we all have shown flexibility to finally achieve a package formula acceptable to all, which, in our preliminary assessment, comes fairly close to the desirable regime we have in mind.

Mr Chairman, we have, after all, accumulated and consolidated in more than 25 years of the Antarctic Treaty system a good tradition of cooperative spirit.

We are therefore happy that we can witness today yet another consummation of the fruits of our cooperation on the basis of such tradition.

As one of the original Signatory States of the Antarctic Treaty, the Japanese delegation is convinced that the work we have successfully achieved today will further solidify our bonds of collaboration and strengthen our system.

We are also happy that, in the light of the growing interests manifested in the United Nations and elsewhere as to the validity of our system, we were able once again to demonstrate the capability and solidarity of our regime.

Mr Chairman, I would like to conclude my statement with the words of gratitude and also of belief in our Antarctic Treaty system, with the expression of our hopes for the early entry into force of the Convention; the objective of which we are also prepared to work towards with continued positive willingness and determination.

Thank you.

STATEMENT BY MR IVHO ACUNA, HEAD OF DELEGATION, URUGUAY

The Delegation of Uruguay considers that the Convention on the Regulation of Antarctic Mineral Resource Activities, the text of which is adopted today, constitutes in general an outstanding step towards the accomplishment and strengthening of the basic principles of the Antarctic system, such as the exclusive use of Antarctica for peaceful purposes, conservation of its environment, freedom of scientific research and international cooperation, all of which tend towards a better understanding and preservation of the area in the interest of mankind.

Likewise this Convention represents particularly a system that looks at the possible use of Antarctic mineral resources, with special protection of the environment and the dependent and associated ecosystems, in a context that favours both internally and externally a harmonisation of the diverse interests of the international community by way of principles and institutional structure.

Our delegation wishes to emphasise particularly its satisfaction at the establishment of the Convention out of principles of cooperation and participation between States with special consideration for the developing countries, and earnestly hopes for those principles to materialise through the formal structure of the system and the considerable results arising from them.

The participation of Uruguay in the process that led to the adoption of the text of the Convention, as well as its future participation in the system that has been created, is inspired and based on its special interest for Antarctica, the responsibility and the interest it has as a member of the international community, and the scope of the orderly system that is now adopted. All this is without prejudice to the reservation of rights which Uruguay is entitled to in Antarctica in accordance with international law.

This Convention will constitute then an outstanding juridical instrument of the Antarctic system which, anticipating the situation it regulates, emphasises the importance of international law as a means of bringing international relations into harmony and order, in a climate of understanding and cooperation between nations and all mankind.

Finally we wish to thank the Chairman of this Meeting, Ambassador Chris Beeby, and through him the Government and people of New Zealand, for their hospitality and the facilities offered, extending our gratitude to all individuals that have worked together to make this Meeting a success.

STATEMENT BY MR ANTONIUS EITEL, HEAD OF DELEGATION,
FEDERAL REPUBLIC OF GERMANY

The Delegation of the Federal Republic of Germany wishes to state what follows:

- 1 Unilateral declarations which are made today may have legal effect only for the actual stage reached by the text of the Convention and may not purport to replace or to be similar to declarations made on later occasions (signature, ratification, accession, deposit of the respective instrument).
- 2 The Delegation of the Federal Republic of Germany believes that inaccuracies may have found their way into the several texts drafted and translated during the last days and nights; it therefore reserves its position with respect to corrections which may be deemed necessary.

STATEMENT BY MR ANTONIO GUERREIRO, HEAD OF DELEGATION,
BRAZIL

Mr Chairman

We have come to the end of a long journey, which began six years ago here in Wellington. Six years of intense and hard negotiations culminating in the adoption, this second of June, of the Convention on the Regulation of Antarctic Mineral Resource Activities.

The Fourth Special Antarctic Treaty Consultative Meeting has fulfilled its mandate, as prescribed in Recommendation XI-1. We now have an agreed regime which will enable mineral resource activities to be carried out in Antarctica within an agreed legal framework.

Much was at stake. The interests involved were extremely sensitive. The odds were certainly not in our favour. Yet we succeeded. Delicately balanced compromises were struck and accommodations of many apparently irreconcilable interests were made. This was only possible - certainly because of our patience, painstaking efforts and concessions from all sides - but above all by virtue of a common and deep-rooted attachment to the Antarctic Treaty.

Today's events are proof of the strength and vitality of the Antarctic Treaty.

Mr Chairman, as I am sure is the case with many other countries, Brazil believes that this Convention leaves much to be desired. In many aspects it falls short of what we believe should have been achieved. For instance in terms of reflecting the interests of a group of countries - in particular the developing countries - and in terms of taking account of the concerns of mankind as a whole in what has been called the external accommodation.

Yet for the first time within the Antarctic Treaty system the Convention we have just adopted recognises that developing countries have specific and legitimate interests which are to be taken into account. It contains clauses providing for this participation in the institutions of the regime and their participation in mineral resource activities themselves is encouraged by means of some operational provisions. As I said, this is far from what we thought ideal.

But, having entered these negotiations at a late stage after becoming a Consultative Party, Brazil takes some pride in what it and other countries eventually achieved as far as having the interests of developing countries accommodated.

The protection of the environment has always been a major concern in our efforts. We are confident that the strict environmental rules in the Convention will allow that the Antarctic environment not be damaged as a result of mineral resource activities.

Mr Chairman, my Government will now examine the Convention in the light of Brazil's national interests which are essentially identified with the maintenance of peace, harmony and cooperation in Antarctica.

Before concluding I wish to express our deep gratitude to the Government of New Zealand for the efforts it put into the arrangements for the holding of this most successful meeting. We also wish to express our heartfelt thanks to the Secretariat for their excellent job.

If we arrived at this stage having accomplished the task we had set for ourselves, it is due in no small measure to having you, Mr Chairman, at the helm of our proceedings. Had it not been for your patience, your permanent creativity, your fairness and your wisdom, the Fourth Special Antarctic Treaty Consultative Meeting would not have been crowned with success.

STATEMENT BY MR SERGUEI KAREV, HEAD OF DELEGATION, UNION OF SOVIET SOCIALIST REPUBLICS

Allow me to express, first of all, on behalf of the Soviet Delegation, our profound gratitude to the New Zealand Government for the excellent organisation of the final session of the Fourth Special Consultative Meeting of States Parties of the Antarctic Treaty, which in many ways made possible the preparation of the final text of the Convention, which we adopted several minutes ago.

I would also like to express, on behalf of the Soviet Delegation, our special thanks to you, Mr Chris Beeby. Without your immense personal contribution I am sure that we would not have been able to resolve the complex problems which were before us so successfully and opportunely.

We are also very grateful to all the representatives of the Secretariat who bore a heavy burden during the session and who coped with their duties with honour.

Mr Chairman,

The Convention which we have just adopted may be called an important fact of international life. It fills in the appreciable gap in the Antarctic Treaty system, and serves to strengthen further this important international document which has established in full a nuclear-free, demilitarised zone in a vast area. The drawing up of the Convention serves also as evidence of the unity of the Parties to the Antarctic Treaty, and their recognition of the accomplishments of this document which has a special meaning in view of the approaching 30 year anniversary of the entry into force of the Treaty.

Of course, the Convention, the result of a compromise, does not and cannot reflect every wish uttered by delegations during six years of negotiations. We, like other delegations, would have preferred to see several clauses of the Convention strengthened.

However, as a whole, we consider that we have before us a high quality document, which lays a good foundation for further work by the institutions of the system. In this we naturally proceed from the fact that in their interpretation and application of the Convention, the Parties will base themselves fully on those political and legal realities which were consolidated in the Antarctic Treaty. In particular, we proceed from the fact that

nothing in the Convention prejudices the position of the Soviet Union in relation to the application of Article IV of the Antarctic Treaty.

The Soviet Delegation interprets Article 5 of the Convention thus: that collective responsibility of the Antarctic Treaty Consultative Parties applies to any resource activities south of 60° south latitude.

Allow me in conclusion, Mr Chairman, to thank you personally once more, and also the representatives of the delegations present for the contribution which each of you has brought to the preparation of the Convention at all the sessions of the Special Meeting on Antarctic Mineral Resources.

Thank you.

STATEMENT BY MR ALBERTO DAVEREDE, HEAD OF DELEGATION,
ARGENTINA

Mr Chairman,

Firstly I wish to express the profound gratitude of my Government and my delegation to the people and Government of New Zealand for the warm hospitality that was given to us during this extended session, for the wonderful organisation of this Conference, and also for all the kindness we received.

With regard to the way you headed the negotiations which have taken place in the last four years, Mr Chairman, we can only call it extraordinary. If we have arrived at the result pursued at such length it is essentially due to your wisdom, patience, diligence, impartiality and many other high qualities you possess. For all this we are very grateful to you, and also because with your charm and sense of humour you have managed to make more pleasant a task that at certain times has been intense and difficult.

I must also mention the brilliant performance of your co-workers, whose great efficiency has made it possible to attain results that can only be considered near miraculous. To all of them, to those who have worked in the Secretariat, to the translators and interpreters, many thanks.

Mr Chairman, today we have come to the end of a long journey, having achieved the adoption of a Convention that constitutes a real challenge to the imagination. We are sure that the system established in the Convention will contribute to the strengthening of the Antarctic Treaty, to which it will be subordinated and of which system it will form an integral part. We believe that, as for other components of the Antarctic Treaty system, we have obtained by consensus an instrument that respects the premises of that Treaty in its entirety, and that therefore it will result in being acceptable to all the States that make up the system, without prejudice to their juridical positions towards Antarctica.

For my country the clauses on the protection of the Antarctic environment and of dependent and associated ecosystems are of particular importance. We still would have liked those clauses to be even more strict, as could have been achieved in particular through a more strict system of liability for the Operator and for the Sponsoring State. But we believe that the structure we

have designed, correctly put into practice, will make it possible for the mineral resource activities that may be judged acceptable to be carried out without impairment to the environment nor to other legitimate uses of Antarctica.

My delegation is pleased that we have adopted a Convention which, as has been entrusted by Recommendation XI-1, recognises the interests of humanity in relation to Antarctica, and of which the system remains open for participation by any interested State that accepts the Antarctic Treaty. International participation and cooperation will also be ensured by numerous provisions which particularly benefit developing countries which will also enjoy the opportunities of technical-scientific and environmental advice and training provided by the system.

I would now like to mention some particular clauses. Firstly my Delegation believes that a correct interpretation of Article 5 and related Articles on the area of the Convention can only produce the following results:

- that the Convention applies to the continental shelf adjacent to the Antarctic territory to its full extension, by reference to Article 76 of the United Nations Convention on the Law of the Sea, including the rules and criteria of the provision on minimum and maximum distances to which that shelf can extend;
- that the continental shelves thus defined remain included in the area of application of the Convention, even when they extend further north than 60° south latitude; and
- that the Convention shall not be interpreted as prohibiting Antarctic mineral resource activities on the seabed beyond the continental shelves governed by this Convention. Such activities are subject to other regulations of international law, without prejudice to special responsibilities of Antarctic Treaty Consultative Parties in the area of the above Treaty.

Moreover, it is clear that Article 35(7)(b) is referring to the State or States identified in Article 29(2)(a) of the Convention, and in particular for each area.

In regard to the entry into force of the Convention, my Delegation believes that Article 62 can only be interpreted as requiring at least for the entry into force of the Convention its ratification by all the States that are referred to in Article IV(1)(a) and (b) of the Antarctic Treaty, of which my country is one.

Mr Chairman, my Delegation, in participating in the adoption of this Convention, reaffirms the sovereignty of the Argentine Republic over the Argentine Antarctic Sector, located between the meridians of 25° and 74° west longitude and the parallel of 60° south latitude. Our rights over this sector are protected by Article IV of the Antarctic Treaty and Article 9 of this Convention, which provide that nothing in these instruments shall be interpreted as a renunciation or diminution of rights to territorial sovereignty in Antarctica or to rights of sovereignty and coastal State jurisdiction in Antarctica.

At the same time, my Delegation takes note that the territorial claims in Antarctic are the basis for a variety of provisions in the Convention that cause certain effects on the application of the regime that regulates Antarctic mineral resource activities. These provisions establish that States Parties claiming sovereignty in Antarctica shall exercise certain specific rights in fixed stages of the application of the Convention in regard to the area of Antarctica that they are claiming.

The structure of the Convention makes it possible that an area of mineral activity may partially include sectors claimed by more than one State Party, either because the claims are adjacent or because they overlap.

In such cases the Convention allows for a harmonious application of its provisions, which will allow the Argentine Republic and the two other States Parties with claims of sovereignty, which either fully or partly overlap the Argentine Antarctic Sector, to exercise the rights emanating from the Convention in a coordinated way, in accordance with the methods that they may establish, at the right time and within the context of the Convention and in accordance with its objectives and principles.

The negotiations that will take place in order to achieve this aim starting from the adoption of this Convention shall not be interpreted as a renunciation or diminution of the rights to territorial sovereignty of the Argentine Republic in Antarctica or its rights or coastal State jurisdiction in Antarctica. Such negotiations shall not be interpreted as prejudicial to its rights nor as a recognition of or support for the position of whichever of the two other Parties in respect of their claims of territorial sovereignty or of rights or coastal State jurisdiction in Antarctica.

STATEMENT BY MR KJELL ANNELING, HEAD OF DELEGATION, SWEDEN

Mr Chairman

At this stage of our meeting I will be brief, but I would like to join the other speakers today in extending our delegation's warm thanks to you, your collaborators and staff, for all your endeavours and the excellent arrangements during this meeting.

Our delegation has at previous Plenary meetings expressed our views on questions of special interest and concern to us and I will not repeat them now.

The outcome of this meeting is a compromise, which we hope will work well in the future. We see in this Convention a very important contribution to the strengthening of the Antarctic Treaty system.

No convention is perfect and this is also true of this regime. We believe, however, that it, in fact, gives a tolerable framework within which to work. It is our common responsibility to see to it that it in the future will be applied in a responsible way. My country hopes to come into the position to take part fully in the work of the future institutions of the regime, including the Commission, and to share this responsibility.

Last, but not least, our warm thanks to you Mr Chairman, for many years of inspiring leadership in these negotiations.

Thank you.

STATEMENT BY MR R TUCKER SCULLY, HEAD OF DELEGATION,
UNITED STATES

Mr Chairman

I would like to set forth the position of my Government that this Convention and its provisions, which have just been adopted, are consistent with and do not affect in any way the provisions of the Antarctic Treaty, particularly Article IV.

I would also like to refer to the difficult discussions which took place on the provisions of liability set forth in Article 8 of the Convention. Article 8(10) provides for a liability regime in the period after entry into force of this Convention and prior to the entry into force of the Protocol on liability foreseen therein. Since we will need to make provision for this system in our domestic legislation, I would like to state several understandings of my delegation in this regard.

First, we note the reference in the Final Act to Article 37 in relation to Article 8(10). The interpretation contained in the Final Act will be the basis for determining the requirements of financial responsibility for any US prospector during this period.

Second, it is our understanding that, with respect to Article 8(4)(b), the term "terrorism" in that paragraph includes those types of acts referenced in the International Maritime Organisation Convention and Protocol on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, not only on board or against ships or fixed platforms located offshore in the area of our Convention, but also such actions against Operators on land in that area.

In addition, Mr Chairman, Article 8(3) alludes to State responsibility under international law in the event of damage that would not have occurred or continued if a Sponsoring State had carried out its obligations under the Convention. My delegation considers that such State responsibility would not arise under international law if a State has taken reasonable measures to ensure compliance with the provisions of the Convention by Operators it sponsors.

STATEMENT BY MR JOACHIM ELM, HEAD OF DELEGATION, GERMAN
DEMOCRATIC REPUBLIC

The delegation of the GDR is convinced that the Convention on the Regulation of Antarctic Mineral Resource Activities will contribute to the strengthening of the Antarctic Treaty system as a whole which has proved effective in ensuring the maintenance of peace and complete demilitarisation of the sixth continent and in promoting international cooperation among the nations, independent of their differing political, economic and social systems or their level of development.

In this connection special mention should be made of Article IV of the Antarctic Treaty.

The GDR, a State Party to the Antarctic Treaty which neither recognises nor asserts rights of or claims to territorial sovereignty in Antarctica would like to stress that no provision of the present Convention can be interpreted or applied as to have any influence on this legal position of our country.

FINAL ACT OF THE
FOURTH SPECIAL ANTARCTIC TREATY CONSULTATIVE MEETING
ON ANTARCTIC MINERAL RESOURCES

FINAL ACT OF THE
FOURTH SPECIAL ANTARCTIC TREATY CONSULTATIVE MEETING
ON ANTARCTIC MINERAL RESOURCES

The final session of the Fourth Special Antarctic Treaty Consultative Meeting on Antarctic Mineral Resources was held at Wellington from 2 May to 2 June 1988. Representatives of the Consultative Parties to the Antarctic Treaty, namely Argentina, Australia, Belgium, Brazil, Chile, China, France, German Democratic Republic, Federal Republic of Germany, India, Italy, Japan, New Zealand, Norway, Poland, South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay, participated in the Meeting. On the invitation of the Consultative Parties, Representatives of 13 Contracting Parties to the Antarctic Treaty that are not Consultative Parties, namely Bulgaria, Canada, Czechoslovakia, Denmark, Ecuador, Finland, Greece, Republic of Korea, Netherlands, Papua New Guinea, Peru, Romania and Sweden, also participated in the Meeting.

As a result of their deliberations, the Consultative Parties adopted in the official languages of the Antarctic Treaty the "Convention on the Regulation of Antarctic Mineral Resource Activities", the text of which is annexed to this Final Act and agreed that it would be opened for signature at Wellington on 25 November 1988.

Taking into account the decision reflected in Article 67 of the Convention that Chinese would be an authentic language, the Meeting agreed that the Drafting Committee would be reconvened by the Depositary, at a time and place to be agreed, for the purpose of bringing into concordance with the text of the Convention in the four official

languages of the Antarctic Treaty, a Chinese text. To this end it was agreed that the Depositary would circulate in advance of such meeting a text of the Convention in the Chinese language.

The Meeting also agreed that the Drafting Committee should consider any questions of linguistic consistency, which might possibly be found to be necessary, in the authentic texts in the official languages of the Antarctic Treaty with a view to their rectification in accordance with the rules and procedures set forth in the Vienna Convention on the Law of Treaties 1969.

With respect to the decision reflected in Article 67(2) of the Convention the Meeting noted that at any time after the opening for signature of the Convention a Signatory or Acceding State could lodge with the Depositary an official translation of the Convention which would then be circulated in accordance with Article 67(2).

The Meeting also considered the question of continuing the restraint of Antarctic mineral resource activities agreed to in Recommendation IX-1 for the interim period before the entry into force of the Convention. Taking into account Recommendation IX-1 and the adoption by the Meeting of the Convention on the Regulation of Antarctic Mineral Resource Activities, the Meeting agreed that all States represented at the Meeting would urge their nationals and other States to refrain from Antarctic mineral resource activities as defined in the Convention pending its timely entry into force.

The Meeting recognised that unfair economic practices including certain forms of subsidies could cause adverse effects to the interests of Parties to the Convention and that such effects should be addressed in the context of the relevant multilateral agreements. To this end, the

Meeting agreed that Parties to the Convention which are also Parties to such multilateral agreements will determine conditions of application of these agreements to Antarctic mineral resource activities.

The Meeting noted that mineral resources, as defined in Article 1(6) of the Convention, do not include ice and that if harvesting of ice, including icebergs, were to become a possibility in the future there could be impacts on the Antarctic environment and on dependent and on associated ecosystems. The Meeting also noted that the harvesting of ice from the coastal region of Antarctica, more particularly if land based facilities were required, could raise some of the environmental and other issues addressed in the Convention. The Meeting agreed that the question of harvesting Antarctic ice should be further considered by the Antarctic Treaty Consultative Parties at the next regular meeting.

The Meeting noted the requirement under Article 8 of the Convention for a separate Protocol on liability and agreed that it would be desirable to begin work on its elaboration at an early stage.

With respect to the financial obligations of Operators, the Meeting noted the importance for the operation of the Convention that an indication of the possible extent of the financial obligations of Operators should be available to them in reasonable time before applications for exploration permits are submitted.

The Meeting agreed that the area of regulation of Antarctic mineral resource activities defined in Article 5(2) of the Convention does not extend to any continental shelf appurtenant in accordance with international law to islands situated north of 60° south latitude.

The Meeting also agreed that the geographic extent of the continental shelf as referred to in Article 5(3) of the Convention would be determined by reference to all the criteria and the rules embodied in paragraphs 1 to 7 of Article 76 of the United Nations Convention on the Law of the Sea.

With respect to Articles 6 and 41(1)(d) of the Convention, the Meeting noted that the promotion and encouragement of international participation do not prejudice the right of any applicant to exercise freedom of choice over the partners in a joint venture, including the terms of their partnership, consistently with the Articles referred to above and any measures pursuant to them, in offering international participation in any proposed Antarctic mineral resource activity.

The Meeting agreed that Article 8(10) of the Convention was to be interpreted as excluding multiple judgments in respect of the same liability claim. Specifically, if a liability claim has been referred to adjudication in the courts of one Party, such claim would not be subject to additional adjudication while those proceedings are pending or after they have resulted in a final judgment. The Meeting also noted that Article 8(10) would apply in the period prior to entry into force of the Protocol referred to in Article 8(7) and it was understood that paragraph 10 should be interpreted in light of Article 37 of the Convention and that the Operators referred to in that paragraph were those defined in Article 1 of the Convention.

In relation to Article 29 of the Convention the Meeting agreed that the member or members of the Commission mentioned in Article 29(2)(a) are those identified by reference to Article IV(1)(a) of the Antarctic Treaty.

The members of the Commission mentioned in Article 29(2)(b) are those identified by reference to Article IV(1)(b) of the Antarctic Treaty.

The Meeting acknowledged that the specific formula in Article 29(3)(b) of the Convention ("at least three developing country members" of the Commission) accurately reflected the balance between developed and developing Consultative Parties as at the date of the adoption of the Convention. It was also recognised that in the event of an increase of the size of the Commission in the future resulting in a significant alteration of this balance, there would be a case for considering, by way of an amendment in accordance with Article 64 of the Convention, the specific formula in Article 29(3)(b) of the Convention and, by reference to paragraph 2(c)(ii) of that Article, the total membership of the Regulatory Committee.

The Meeting agreed that it was desirable that the decision making process in the Regulatory Committee pursuant to Article 32 of the Convention should reflect all the interests represented in the Regulatory Committee. It was also agreed, in particular, that it was desirable that the two-thirds majority referred to in Article 32 should include at least one developing country.

With respect to Article 62 of the Convention, the Meeting agreed that all of the institutions of the Convention could not be established in respect of every area of Antarctica unless all the States referred to in Article IV(1)(a) and (b) of the Antarctic Treaty and at least four States referred to in paragraph 1(c) of that Article were Parties to the Convention, and that these included at least three developing countries.

The Meeting agreed that the titles of Chapters and Articles in the Convention are indicative only and were included for the sole purpose of facilitating examination of the text and reference to different provisions of the Convention.

The Meeting also agreed that the contents of this Final Act are without prejudice to the legal position under the Antarctic Treaty of any Party.

Done at Wellington, this second day of June 1988, in a single original copy in the four official languages of the Antarctic Treaty to be deposited in the archives of the Government of New Zealand which will transmit a certified copy thereof to all Contracting Parties to the Antarctic Treaty.

CONVENTION ON THE REGULATION OF
ANTARCTIC MINERAL RESOURCE ACTIVITIES

CONVENTION ON THE REGULATION OF
ANTARCTIC MINERAL RESOURCE ACTIVITIES

PREAMBLE

The States Parties to this Convention, hereinafter referred to as the Parties,

Recalling the provisions of the Antarctic Treaty;

Convinced that the Antarctic Treaty system has proved effective in promoting international harmony in furtherance of the purposes and principles of the Charter of the United Nations, in ensuring the absence of any measures of a military nature and the protection of the Antarctic environment and in promoting freedom of scientific research in Antarctica;

Reaffirming that it is in the interest of all mankind that the Antarctic Treaty area shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

Noting the possibility that exploitable mineral resources may exist in Antarctica;

Bearing in mind the special legal and political status of Antarctica and the special responsibility of the Antarctic Treaty Consultative Parties to ensure that all activities in Antarctica are consistent with the purposes and principles of the Antarctic Treaty;

Bearing in mind also that a regime for Antarctic mineral resources must be consistent with Article IV of the Antarctic Treaty and in accordance therewith be without prejudice and acceptable to those States which assert rights of or claims to territorial sovereignty in Antarctica, and those States which neither recognise nor assert such rights or claims, including those States which assert a basis of claim to territorial sovereignty in Antarctica;

Noting the unique ecological, scientific and wilderness value of Antarctica and the importance of Antarctica to the global environment;

Recognising that Antarctic mineral resource activities could adversely affect the Antarctic environment or dependent or associated ecosystems;

Believing that the protection of the Antarctic environment and dependent and associated ecosystems must be a basic consideration in decisions taken on possible Antarctic mineral resource activities;

Concerned to ensure that Antarctic mineral resource activities, should they occur, are compatible with scientific investigation in Antarctica and other legitimate uses of Antarctica;

Believing that a regime governing Antarctic mineral resource activities will further strengthen the Antarctic Treaty system;

Convinced that participation in Antarctic mineral resource activities should be open to all States which have an interest in such activities and subscribe to a regime governing them and that the special situation of developing country Parties to the regime should be taken into account;

Believing that the effective regulation of Antarctic mineral resource activities is in the interest of the international community as a whole;

HAVE AGREED as follows:

CHAPTER I : GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Convention:

1 "Antarctic Treaty" means the Antarctic Treaty done at Washington on 1 December 1959.

2 "Antarctic Treaty Consultative Parties" means the Contracting Parties to the Antarctic Treaty entitled to appoint representatives to participate in the meetings referred to in Article IX of that Treaty.

3 "Antarctic Treaty area" means the area to which the provisions of the Antarctic Treaty apply in accordance with Article VI of that Treaty.

4 "Convention for the Conservation of Antarctic Seals" means the Convention done at London on 1 June 1972.

5 "Convention on the Conservation of Antarctic Marine Living Resources" means the Convention done at Canberra on 20 May 1980.

6 "Mineral resources" means all non-living natural non-renewable resources, including fossil fuels, metallic and non-metallic minerals.

7 "Antarctic mineral resource activities" means prospecting, exploration or development, but does not include scientific research activities within the meaning of Article III of the Antarctic Treaty.

8 "Prospecting" means activities, including logistic support, aimed at identifying areas of mineral resource potential for possible exploration and development, including geological, geochemical and geophysical investigations and field observations, the use of remote sensing techniques and collection of surface, seafloor and sub-ice samples. Such activities do not include dredging and excavations, except for the purpose of obtaining small-scale samples, or drilling, except shallow drilling into rock and sediment to depths not exceeding 25 metres, or such other depth as the Commission may determine for particular circumstances.

9 "Exploration" means activities, including logistic support, aimed at identifying and evaluating specific mineral resource occurrences or deposits, including exploratory drilling, dredging and other surface or subsurface excavations required to determine the nature and size of mineral resource deposits and the feasibility of their development, but excluding pilot projects or commercial production.

10 "Development" means activities, including logistic support, which take place following exploration and are aimed at or associated with exploitation of specific mineral resource deposits, including pilot projects, processing, storage and transport activities.

11 "Operator" means:

- (a) a Party; or
- (b) an agency or instrumentality of a Party; or
- (c) a juridical person established under the law of a Party; or
- (d) a joint venture consisting exclusively of any combination of any of the foregoing,

which is undertaking Antarctic mineral resource activities and for which there is a Sponsoring State.

12 "Sponsoring State" means the Party with which an Operator has a substantial and genuine link, through being:

- (a) in the case of a Party, that Party;
- (b) in the case of an agency or instrumentality of a Party, that Party;
- (c) in the case of a juridical person other than an agency or instrumentality of a Party, the Party:
 - (i) under whose law that juridical person is established and to whose law it is subject, without prejudice to any other law which might be applicable, and
 - (ii) in whose territory the management of that juridical person is located, and
 - (iii) to whose effective control that juridical person is subject;
- (d) in the case of a joint venture not constituting a juridical person:
 - (i) where the managing member of the joint venture is a Party or an agency or instrumentality of a Party, that Party; or
 - (ii) in any other case, where in relation to a Party the managing member of the joint venture satisfies the requirements of subparagraph (c) above, that Party.

13 "Managing member of the joint venture" means that member which the participating members in the joint venture have by agreement designated as having responsibility for central management of the joint venture, including the functions of organising and supervising the activities to be undertaken, and controlling the financial resources involved.

14 "Effective control" means the ability of the Sponsoring State to ensure the availability of substantial resources of the Operator for purposes connected with the implementation of this Convention, through the location of such resources in the territory of the Sponsoring State or otherwise.

15 "Damage to the Antarctic environment or dependent or associated ecosystems" means any impact on the living or non-living components of that environment or those ecosystems, including harm to atmospheric, marine or terrestrial life, beyond that which is negligible or which has been assessed and judged to be acceptable pursuant to this Convention.

16 "Commission" means the Antarctic Mineral Resources Commission established pursuant to Article 18.

17 "Regulatory Committee" means an Antarctic Mineral Resources Regulatory Committee established pursuant to Article 29.

18 "Advisory Committee" means the Scientific, Technical and Environmental Advisory Committee established pursuant to Article 23.

19 "Special Meeting of Parties" means the Meeting referred to in Article 28.

20 "Arbitral Tribunal" means an Arbitral Tribunal constituted as provided for in the Annex, which forms an integral part of this Convention.

Article 2

Objectives and General Principles

1 This Convention is an integral part of the Antarctic Treaty system, comprising the Antarctic Treaty, the measures in effect under that Treaty, and its associated separate legal instruments, the prime purpose of which is to ensure that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord. The Parties provide through this Convention, the principles it establishes, the rules it prescribes, the institutions it creates and the decisions adopted pursuant to it, a means for:

- (a) assessing the possible impact on the environment of Antarctic mineral resource activities;
- (b) determining whether Antarctic mineral resource activities are acceptable;
- (c) governing the conduct of such Antarctic mineral resource activities as may be found acceptable; and
- (d) ensuring that any Antarctic mineral resource activities are undertaken in strict conformity with this Convention.

2 In implementing this Convention, the Parties shall ensure that Antarctic mineral resource activities, should they occur, take place in a manner consistent with all the components of the Antarctic Treaty system and the obligations flowing therefrom.

3 In relation to Antarctic mineral resource activities, should they occur, the Parties acknowledge the special responsibility of the Antarctic Treaty Consultative Parties for the protection of the environment and the need to:

- (a) protect the Antarctic environment and dependent and associated ecosystems;
- (b) respect Antarctica's significance for, and influence on, the global environment;
- (c) respect other legitimate uses of Antarctica;
- (d) respect Antarctica's scientific value and aesthetic and wilderness qualities;
- (e) ensure the safety of operations in Antarctica;
- (f) promote opportunities for fair and effective participation of all Parties; and
- (g) take into account the interests of the international community as a whole.

Article 3

Prohibition of Antarctic Mineral Resource Activities Outside this Convention

No Antarctic mineral resource activities shall be conducted except in accordance with this Convention and measures in effect pursuant to it and, in the case of exploration or development, with a Management Scheme approved pursuant to Article 48 or 54.

Article 4

Principles Concerning Judgments on Antarctic Mineral Resource Activities

1 Decisions about Antarctic mineral resource activities shall be based upon information adequate to enable informed judgments to be made about their possible impacts and no such activities shall take place unless this information is available for decisions relevant to those activities.

2 No Antarctic mineral resource activity shall take place until it is judged, based upon assessment of its possible impacts on the Antarctic environment and on dependent and on associated ecosystems, that the activity in question would not cause:

- (a) significant adverse effects on air and water quality;
- (b) significant changes in atmospheric, terrestrial or marine environments;
- (c) significant changes in the distribution, abundance or productivity of populations of species of fauna or flora;
- (d) further jeopardy to endangered or threatened species or populations of such species; or
- (e) degradation of, or substantial risk to, areas of special biological, scientific, historic, aesthetic or wilderness significance.

3 No Antarctic mineral resource activity shall take place until it is judged, based upon assessment of its possible impacts, that the activity in question would not cause significant adverse effects on global or regional climate or weather patterns.

4 No Antarctic mineral resource activity shall take place until it is judged that:

- (a) technology and procedures are available to provide for safe operations and compliance with paragraphs 2 and 3 above;
- (b) there exists the capacity to monitor key environmental parameters and ecosystem components so as to identify any adverse effects of such activity and to provide for the modification of operating procedures as may be necessary in the light of the results of monitoring or increased knowledge of the Antarctic environment or dependent or associated ecosystems; and
- (c) there exists the capacity to respond effectively to accidents, particularly those with potential environmental effects.

5 The judgments referred to in paragraphs 2, 3 and 4 above shall take into account the cumulative impacts of possible Antarctic mineral resource activities both by themselves and in combination with other such activities and other uses of Antarctica.

Article 5

Area of Application

1 This Convention shall, subject to paragraphs 2, 3 and 4 below, apply to the Antarctic Treaty area.

2 Without prejudice to the responsibilities of the Antarctic Treaty Consultative Parties under the Antarctic Treaty and measures pursuant to it, the Parties agree that this Convention shall regulate Antarctic mineral resource activities which take place on the continent of Antarctica and all Antarctic islands, including all ice shelves, south of 60° south latitude and in the seabed and subsoil of adjacent offshore areas up to the deep seabed.

3 For the purposes of this Convention "deep seabed" means the seabed and subsoil beyond the geographic extent of the continental shelf as the term continental shelf is defined in accordance with international law.

4 Nothing in this Article shall be construed as limiting the application of other Articles of this Convention in so far as they relate to possible impacts outside the area referred to in paragraphs 1 and 2 above, including impacts on dependent or on associated ecosystems.

Article 6

Cooperation and International Participation

In the implementation of this Convention cooperation within its framework shall be promoted and encouragement given to international participation in Antarctic mineral resource activities by interested Parties which are Antarctic Treaty Consultative Parties and by other interested Parties, in particular, developing countries in either category. Such participation may be realised through the Parties themselves and their Operators.

Article 7

Compliance with this Convention

1 Each Party shall take appropriate measures within its competence to ensure compliance with this Convention and any measures in effect pursuant to it.

2 If a Party is prevented by the exercise of jurisdiction by another Party from ensuring compliance in accordance with paragraph 1 above, it shall not, to the extent that it is so prevented, bear responsibility for that failure to ensure compliance.

3 If any jurisdictional dispute related to compliance with this Convention or any measure in effect pursuant to it arises between two or more Parties, the Parties concerned shall immediately consult together with a view to reaching a mutually acceptable solution.

4 Each Party shall notify the Executive Secretary, for circulation to all other Parties, of the measures taken pursuant to paragraph 1 above.

5 Each Party shall exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any Antarctic mineral resource activities contrary to the objectives and principles of this Convention.

6 Each Party may, whenever it deems it necessary, draw the attention of the Commission to any activity which in its opinion affects the implementation of the objectives and principles of this Convention.

7 The Commission shall draw the attention of all Parties to any activity which, in the opinion of the Commission, affects the implementation of the objectives and principles of this Convention or the compliance by any Party with its obligations under this Convention and any measures in effect pursuant to it.

8 The Commission shall draw the attention of any State which is not a Party to this Convention to any activity undertaken by that State, its agencies or instrumentalities, natural or juridical persons, ships, aircraft or other means of transportation which, in the opinion of the Commission, affects the implementation of the objectives and principles of this Convention. The Commission shall inform all Parties accordingly.

9 Nothing in this Article shall affect the operation of Article 12(7) of this Convention or Article VIII of the Antarctic Treaty.

Article 8

Response Action and Liability

- 1 An Operator undertaking any Antarctic mineral resource activity shall take necessary and timely response action, including prevention, containment, clean up and removal measures, if the activity results in or threatens to result in damage to the Antarctic environment or dependent or associated ecosystems. The Operator, through its Sponsoring State, shall notify the Executive Secretary, for circulation to the relevant institutions of this Convention and to all Parties, of action taken pursuant to this paragraph.
- 2 An Operator shall be strictly liable for:
 - (a) damage to the Antarctic environment or dependent or associated ecosystems arising from its Antarctic mineral resource activities, including payment in the event that there has been no restoration to the status quo ante;
 - (b) loss of or impairment to an established use, as referred to in Article 15, or loss of or impairment to an established use of dependent or associated ecosystems, arising directly out of damage described in subparagraph (a) above;
 - (c) loss of or damage to property of a third party or loss of life or personal injury of a third party arising directly out of damage described in subparagraph (a) above; and
 - (d) reimbursement of reasonable costs by whomsoever incurred relating to necessary response action, including prevention, containment, clean up and removal measures, and action taken to restore the status quo ante where Antarctic mineral resource activities undertaken by that Operator result in or threaten to result in damage to the Antarctic environment or dependent or associated ecosystems.
- 3 (a) Damage of the kind referred to in paragraph 2 above which would not have occurred or continued if the Sponsoring State had carried out its obligations under this Convention with respect to its Operator shall, in accordance with international law, entail liability of that Sponsoring State. Such liability shall be limited to that portion of liability not satisfied by the Operator or otherwise.

- (b) Nothing in subparagraph (a) above shall affect the application of the rules of international law applicable in the event that damage not referred to in that subparagraph would not have occurred or continued if the Sponsoring State had carried out its obligations under this Convention with respect to its Operator.

4 An Operator shall not be liable pursuant to paragraph 2 above if it proves that the damage has been caused directly by, and to the extent that it has been caused directly by:

- (a) an event constituting in the circumstances of Antarctica a natural disaster of an exceptional character which could not reasonably have been foreseen; or
- (b) armed conflict, should it occur notwithstanding the Antarctic Treaty, or an act of terrorism directed against the activities of the Operator, against which no reasonable precautionary measures could have been effective.

5 Liability of an Operator for any loss of life, personal injury or loss of or damage to property other than that governed by this Article shall be regulated by applicable law and procedures.

6 If an Operator proves that damage has been caused totally or in part by an intentional or grossly negligent act or omission of the party seeking redress, that Operator may be relieved totally or in part from its obligation to pay compensation in respect of the damage suffered by such party.

7 (a) Further rules and procedures in respect of the provisions on liability set out in this Article shall be elaborated through a separate Protocol which shall be adopted by consensus by the members of the Commission and shall enter into force according to the procedure provided for in Article 62 for the entry into force of this Convention.

(b) Such rules and procedures shall be designed to enhance the protection of the Antarctic environment and dependent and associated ecosystems.

(c) Such rules and procedures:

- (i) may contain provisions for appropriate limits on liability, where such limits can be justified;

- (ii) without prejudice to Article 57, shall prescribe means and mechanisms such as a claims tribunal or other fora by which claims against Operators pursuant to this Article may be assessed and adjudicated;
- (iii) shall ensure that a means is provided to assist with immediate response action, and to satisfy liability under paragraph 2 above in the event, inter alia, that an Operator liable is financially incapable of meeting its obligation in full, that it exceeds any relevant limits of liability, that there is a defence to liability or that the loss or damage is of undetermined origin. Unless it is determined during the elaboration of the Protocol that there are other effective means of meeting these objectives, the Protocol shall establish a Fund or Funds and make provision in respect of such Fund or Funds, inter alia, for the following:
- financing by Operators or on industry wide bases;
 - ensuring the permanent liquidity and mandatory supplementation thereof in the event of insufficiency;
 - reimbursement of costs of response action, by whomsoever incurred.

8 Nothing in paragraphs 4, 6 and 7 above or in the Protocol adopted pursuant to paragraph 7 shall affect in any way the provisions of paragraph 1 above.

9 No application for an exploration or development permit shall be made until the Protocol provided for in paragraph 7 above is in force for the Party lodging such application.

10 Each Party, pending the entry into force for it of the Protocol provided for in paragraph 7 above, shall ensure, consistently with Article 7 and in accordance with its legal system, that recourse is available in its national courts for adjudicating liability claims pursuant to paragraphs 2, 4 and 6 above against Operators which are engaged in prospecting. Such recourse shall include the adjudication of claims against any Operator it has sponsored. Each Party shall also ensure, in accordance with its legal system, that the Commission has the right to appear as a party in its national courts to pursue relevant liability claims under paragraph 2(a) above.

11 Nothing in this Article or in the Protocol provided for in paragraph 7 above shall be construed so as to:

- (a) preclude the application of existing rules on liability, and the development in accordance with international law of further such rules, which may have application to either States or Operators; or
- (b) affect the right of an Operator incurring liability pursuant to this Article to seek redress from another party which caused or contributed to the damage in question.

12 When compensation has been paid other than under this Convention liability under this Convention shall be offset by the amount of such payment.

Article 9

Protection of Legal Positions under the Antarctic Treaty

Nothing in this Convention and no acts or activities taking place while this Convention is in force shall:

- (a) constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the Antarctic Treaty area or create any rights of sovereignty in the Antarctic Treaty area;
- (b) be interpreted as a renunciation or diminution by any Party of, or as prejudicing, any right or claim or basis of claim to territorial sovereignty in Antarctica or to exercise coastal state jurisdiction under international law;
- (c) be interpreted as prejudicing the position of any Party as regards its recognition or non-recognition of any such right, claim or basis of claim; or
- (d) affect the provision of Article IV(2) of the Antarctic Treaty that no new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the Antarctic Treaty is in force.

Article 10Consistency with the Other Components of the
Antarctic Treaty System

1 Each Party shall ensure that Antarctic mineral resource activities take place in a manner consistent with the components of the Antarctic Treaty system, including the Antarctic Treaty, the Convention for the Conservation of Antarctic Seals and the Convention on the Conservation of Antarctic Marine Living Resources and the measures in effect pursuant to those instruments.

2 The Commission shall consult and cooperate with the Antarctic Treaty Consultative Parties, the Contracting Parties to the Convention for the Conservation of Antarctic Seals, and the Commission for the Conservation of Antarctic Marine Living Resources with a view to ensuring the achievement of the objectives and principles of this Convention and avoiding any interference with the achievement of the objectives and principles of the Antarctic Treaty, the Convention for the Conservation of Antarctic Seals or the Convention on the Conservation of Antarctic Marine Living Resources, or inconsistency between the measures in effect pursuant to those instruments and measures in effect pursuant to this Convention.

Article 11

Inspection under the Antarctic Treaty

All stations, installations and equipment, in the Antarctic Treaty area, relating to Antarctic mineral resource activities, as well as ships and aircraft supporting such activities at points of discharging or embarking cargoes or personnel at such stations and installations, shall be open at all times to inspection by observers designated under Article VII of the Antarctic Treaty for the purposes of that Treaty.

Article 12

Inspection under this Convention

1 In order to promote the objectives and principles and to ensure the observance of this Convention and measures in effect pursuant to it, all stations, installations and equipment relating to Antarctic mineral resource activities in the area in which these activities are

regulated by this Convention, as well as ships and aircraft supporting such activities at points of discharging or embarking cargoes or personnel anywhere in that area shall be open at all times to inspection by:

- (a) observers designated by any member of the Commission who shall be nationals of that member; and
- (b) observers designated by the Commission or relevant Regulatory Committees.

2 Aerial inspection may be carried out at any time over the area in which Antarctic mineral resource activities are regulated by this Convention.

3 The Commission shall maintain an up-to-date list of observers designated pursuant to paragraph 1(a) and (b) above.

4 Reports from the observers shall be transmitted to the Commission and to any Regulatory Committee having competence in the area where the inspection has been carried out.

5 Observers shall avoid interference with the safe and normal operations of stations, installations and equipment visited and shall respect measures adopted by the Commission to protect confidentiality of data and information.

6 Inspections undertaken pursuant to paragraph 1(a) and (b) above shall be compatible and reinforce each other and shall not impose an undue burden on the operation of stations, installations and equipment visited.

7 In order to facilitate the exercise of their functions under this Convention, and without prejudice to the respective positions of the Parties relating to jurisdiction over all other persons in the area in which Antarctic mineral resource activities are regulated by this Convention, observers designated under this Article shall be subject only to the jurisdiction of the Party of which they are nationals in respect of all acts or omissions occurring while they are in that area for the purpose of exercising their functions.

8 No exploration or development shall take place in an area identified pursuant to Article 41 until effective provision has been made for inspection in that area.

Article 13

Protected Areas

1 Antarctic mineral resource activities shall be prohibited in any area designated as a Specially Protected Area or a Site of Special Scientific Interest under Article IX(1) of the Antarctic Treaty. Such activities shall also be prohibited in any other area designated as a protected area in accordance with Article IX(1) of the Antarctic Treaty, except to the extent that the relevant measure provides otherwise. Pending any designation becoming effective in accordance with Article IX(4) of the Antarctic Treaty, no Antarctic mineral resource activities shall take place in any such area which would prejudice the purpose for which it was designated.

2 The Commission shall also prohibit or restrict Antarctic mineral resource activities in any area which, for historic, ecological, environmental, scientific or other reasons, it has designated as a protected area.

3 In exercising its powers under paragraph 2 above or under Article 41 the Commission shall consider whether to restrict or prohibit Antarctic mineral resource activities in any area, in addition to those referred to in paragraph 1 above, protected or set aside pursuant to provisions of other components of the Antarctic Treaty system, to ensure the purposes for which they are designated.

4 In relation to any area in which Antarctic mineral resource activities are prohibited or restricted in accordance with paragraph 1, 2 or 3 above, the Commission shall consider whether, for the purposes of Article 4(2)(e), it would be prudent, additionally, to prohibit or restrict Antarctic mineral resource activities in adjacent areas for the purpose of creating a buffer zone.

5 The Commission shall give effect to Article 10(2) in acting pursuant to paragraphs 2, 3 and 4 above.

6 The Commission shall, where appropriate, bring any decisions it takes pursuant to this Article to the attention of the Antarctic Treaty Consultative Parties, the Contracting Parties to the Convention for the Conservation of Antarctic Seals, the Commission for the Conservation of Antarctic Marine Living Resources and the Scientific Committee on Antarctic Research.

Article 14

Non-Discrimination

In the implementation of this Convention there shall be no discrimination against any Party or its Operators.

Article 15

Respect for Other Uses of Antarctica

1 Decisions about Antarctic mineral resource activities shall take into account the need to respect other established uses of Antarctica, including:

- (a) the operation of stations and their associated installations, support facilities and equipment in Antarctica;
- (b) scientific investigation in Antarctica and cooperation therein;
- (c) the conservation, including rational use, of Antarctic marine living resources;
- (d) tourism;
- (e) the preservation of historic monuments; and
- (f) navigation and aviation,

that are consistent with the Antarctic Treaty system.

2 Antarctic mineral resource activities shall be conducted so as to respect any uses of Antarctica as referred to in paragraph 1 above.

Article 16

Availability and Confidentiality of Data and Information

Data and information obtained from Antarctic mineral resource activities shall, to the greatest extent practicable and feasible, be made freely available, provided that:

- (a) as regards data and information of commercial value deriving from prospecting, they may be retained by the Operator in accordance with Article 37;

- (b) as regards data and information deriving from exploration or development, the Commission shall adopt measures relating, as appropriate, to their release and to ensure the confidentiality of data and information of commercial value.

Article 17

Notifications and Provisional Exercise of Functions of the Executive Secretary

1 Where in this Convention there is a reference to the provision of information, a notification or a report to any institution provided for in this Convention and that institution has not been established, the information, notification or report shall be provided to the Executive Secretary who shall circulate it as required.

2 Where in this Convention a function is assigned to the Executive Secretary and no Executive Secretary has been appointed under Article 33, that function shall be performed by the Depositary.

CHAPTER II : INSTITUTIONS

Article 18

Commission

1 There is hereby established the Antarctic Mineral Resources Commission.

2 Membership of the Commission shall be as follows:

- (a) each Party which was an Antarctic Treaty Consultative Party on the date when this Convention was opened for signature; and
- (b) each other Party during such time as it is actively engaged in substantial scientific, technical or environmental research in the area to which this Convention applies directly relevant to decisions about Antarctic mineral resource activities, particularly the assessments and judgments called for in Article 4; and

(c) each other Party sponsoring Antarctic mineral resource exploration or development during such time as the relevant Management Scheme is in force.

3 A Party seeking to participate in the work of the Commission pursuant to subparagraph (b) or (c) above shall notify the Depositary of the basis upon which it seeks to become a member of the Commission. In the case of a Party which is not an Antarctic Treaty Consultative Party, such notification shall include a declaration of intent to abide by recommendations pursuant to Article IX(1) of the Antarctic Treaty. The Depositary shall communicate to each member of the Commission such notification and accompanying information.

4 The Commission shall consider the notification at its next meeting. In the event that a Party referred to in paragraph 2(b) above submitting a notification pursuant to paragraph 3 above is an Antarctic Treaty Consultative Party, it shall be deemed to have satisfied the requirements for Commission membership unless more than one-third of the members of the Commission object at the meeting at which such notification is considered. Any other Party submitting a notification shall be deemed to have satisfied the requirements for Commission membership if no member of the Commission objects at the meeting at which such notification is considered.

5 Each member of the Commission shall be represented by one representative who may be accompanied by alternate representatives and advisers.

6 Observer status in the Commission shall be open to any Party and to any Contracting Party to the Antarctic Treaty which is not a Party to this Convention.

Article 19

Commission Meetings

1 (a) The first meeting of the Commission, held for the purpose of taking organisational, financial and other decisions necessary for the effective functioning of this Convention and its institutions, shall be convened within six months of the entry into force of this Convention.

(b) After the Commission has held the meeting or meetings necessary to take the decisions referred to in subparagraph (a) above, the Commission shall not hold further meetings except in accordance with paragraph 2 or 3 below.

2 Meetings of the Commission shall be held within two months of:

- (a) receipt of a notification pursuant to Article 39;
- (b) a request by at least six members of the Commission; or
- (c) a request by a member of a Regulatory Committee in accordance with Article 49(1).

3 The Commission may establish a regular schedule of meetings if it determines that it is necessary for the effective functioning of this Convention.

4 Unless the Commission decides otherwise, its meetings shall be convened by the Executive Secretary.

Article 20

Commission Procedure

1 The Commission shall elect from among its members a Chairman and two Vice-Chairmen, each of whom shall be a representative of a different Party.

2 (a) Until such time as the Commission has established a regular schedule of meetings in accordance with Article 19(3), the Chairman and Vice-Chairmen shall be elected to serve for a period of two years, provided that if no meeting is held during that period they shall continue to serve until the conclusion of the first meeting held thereafter.

(b) When a regular schedule of meetings has been established, the Chairman and Vice-Chairmen shall be elected to serve for a period of two years.

3 The Commission shall adopt its rules of procedure. Such rules may include provisions concerning the number of terms of office which the Chairman and Vice-Chairmen may serve and for the rotation of such offices.

4 The Commission may establish such subsidiary bodies as are necessary for the performance of its functions.

5 The Commission may decide to establish a permanent headquarters which shall be in New Zealand.

6 The Commission shall have legal personality and shall enjoy in the territory of each Party such legal capacity as may be necessary to perform its functions and achieve the objectives of this Convention.

7 The privileges and immunities to be enjoyed by the Commission, the Secretariat and representatives attending meetings in the territory of a Party shall be determined by agreement between the Commission and the Party concerned.

Article 21

Functions of the Commission

- 1 The functions of the Commission shall be:
- (a) to facilitate and promote the collection and exchange of scientific, technical and other information and research projects necessary to predict, detect and assess the possible environmental impact of Antarctic mineral resource activities, including the monitoring of key environmental parameters and ecosystem components;
 - (b) to designate areas in which Antarctic mineral resource activities shall be prohibited or restricted in accordance with Article 13, and to perform the related functions assigned to it in that Article;
 - (c) to adopt measures for the protection of the Antarctic environment and dependent and associated ecosystems and for the promotion of safe and effective exploration and development techniques and, as it may deem appropriate, to make available a handbook of such measures;
 - (d) to determine, in accordance with Article 41, whether or not to identify an area for possible exploration and development, and to perform the related functions assigned to it in Article 42;
 - (e) to adopt measures relating to prospecting applicable to all relevant Operators:
 - (i) to determine for particular circumstances maximum drilling depths in accordance with Article 1(8);
 - (ii) to restrict or prohibit prospecting consistently with Articles 13, 37 and 38;

- (f) to ensure the effective application of Articles 12(4), 37(7) and (8), 38(2) and 39(2), which require the submission to the Commission of information, notifications and reports;
- (g) to give advance public notice of matters upon which it is requesting the advice of the Advisory Committee;
- (h) to adopt measures relating to the availability and confidentiality of data and information, including measures pursuant to Article 16;
- (i) to elaborate the principle of non-discrimination set forth in Article 14;
- (j) to adopt measures with respect to maximum block sizes;
- (k) to perform the functions assigned to it in Article 29;
- (l) to review action by Regulatory Committees in accordance with Article 49;
- (m) to adopt measures in accordance with Articles 6 and 41(1)(d) related to the promotion of cooperation and to participation in Antarctic mineral resource activities;
- (n) to adopt general measures pursuant to Article 51(6);
- (o) to take decisions on budgetary matters and adopt financial regulations in accordance with Article 35;
- (p) to adopt measures regarding fees payable in connection with notifications submitted pursuant to Articles 37 and 39 and applications lodged pursuant to Articles 44 and 53, the purpose of which fees shall be to cover the administrative costs of handling such notifications and applications;
- (q) to adopt measures regarding levies payable by Operators engaged in exploration and development, the principal purpose of which levies shall be to cover the costs of the institutions of this Convention;
- (r) to determine in accordance with Article 35(7) the disposition of revenues, if any, accruing to the Commission which are surplus to the requirements for financing the budget pursuant to Article 35;
- (s) to perform the functions assigned to it in Article 7(7) and (8);
- (t) to perform the functions relating to inspection assigned to it in Article 12;

- (u) to consider monitoring reports received pursuant to Article 52;
- (v) to perform the functions relating to dispute settlement assigned to it in Article 59;
- (w) to perform the functions relating to consultation and cooperation assigned to it in Articles 10(2) and 34;
- (x) to keep under review the conduct of Antarctic mineral resource activities with a view to safeguarding the protection of the Antarctic environment in the interest of all mankind; and
- (y) to perform such other functions as are provided for elsewhere in this Convention.

2 In performing its functions the Commission shall seek and take full account of the views of the Advisory Committee provided in accordance with Article 26.

3 Each measure adopted by the Commission shall specify the date on which it comes into effect.

4 The Commission shall, subject to Article 16 and measures in effect pursuant to it and paragraph 1(h) above, ensure that a publicly available record of its meetings and decisions and of information, notifications and reports submitted to it is maintained.

Article 22

Decision Making in the Commission

1 The Commission shall take decisions on matters of substance by a three-quarters majority of the members present and voting. When a question arises as to whether a matter is one of substance or not, that matter shall be treated as one of substance unless otherwise decided by a three-quarters majority of the members present and voting.

2 Notwithstanding paragraph 1 above, consensus shall be required for the following:

- (a) the adoption of the budget and decisions on budgetary and related matters pursuant to Article 21(1)(p), (q) and (r) and Article 35(1), (2), (3), (4) and (5);
- (b) decisions taken pursuant to Article 21(1)(i);
- (c) decisions taken pursuant to Article 41(2).

3 Decisions on matters of procedure shall be taken by a simple majority of the members present and voting.

4 Nothing in this Article shall be interpreted as preventing the Commission, in taking decisions on matters of substance, from endeavouring to reach a consensus.

5 For the purposes of this Article, consensus means the absence of a formal objection. If, with respect to any decision covered by paragraph 2(c) above, the Chairman of the Commission determines that there would be such an objection he shall consult the members of the Commission. If, as a result of these consultations, the Chairman determines that an objection would remain, he shall convene those members most directly interested for the purpose of seeking to reconcile the differences and producing a generally acceptable proposal.

Article 23

Advisory Committee

1 There is hereby established the Scientific, Technical and Environmental Advisory Committee.

2 Membership of the Advisory Committee shall be open to all Parties.

3 Each member of the Advisory Committee shall be represented by one representative with suitable scientific, technical or environmental competence who may be accompanied by alternate representatives and by experts and advisers.

4 Observer status in the Advisory Committee shall be open to any Contracting Party to the Antarctic Treaty or to the Convention on the Conservation of Antarctic Marine Living Resources which is not a Party to this Convention.

Article 24

Advisory Committee Meetings

1 Unless the Commission decides otherwise, the Advisory Committee shall be convened for its first meeting within six months of the first meeting of the Commission. It shall meet thereafter as necessary to fulfil its functions on the basis of a schedule established by the Commission.

2 Meetings of the Advisory Committee, in addition to those scheduled pursuant to paragraph 1 above, shall be convened at the request of at least six members of the Commission or pursuant to Article 40(1).

3 Unless the Commission decides otherwise, the meetings of the Advisory Committee shall be convened by the Executive Secretary.

Article 25

Advisory Committee Procedure

1 The Advisory Committee shall elect from among its members a Chairman and two Vice-Chairmen, each of whom shall be a representative of a different Party.

2 (a) Until such time as the Commission has established a schedule of meetings in accordance with Article 24(1), the Chairman and Vice-Chairmen shall be elected to serve for a period of two years, provided that if no meeting is held during that period they shall continue to serve until the conclusion of the first meeting held thereafter.

(b) When a schedule of meetings has been established, the Chairman and Vice-Chairmen shall be elected to serve for a period of two years.

3 The Advisory Committee shall give advance public notice of its meetings and of matters to be considered at each meeting so as to permit the receipt and consideration of views on such matters from international organisations having an interest in them. For this purpose the Advisory Committee may, subject to review by the Commission, establish procedures for the transmission of relevant information to these organisations.

4 The Advisory Committee shall, by a two-thirds majority of the members present and voting, adopt its rules of procedure. Such rules may include provisions concerning the number of terms of office which the Chairman and Vice-Chairmen may serve and for the rotation of such offices. The rules of procedure and any amendments thereto shall be subject to approval by the Commission.

5 The Advisory Committee may establish such subcommittees, subject to budgetary approval, as may be necessary for the performance of its functions.

Article 26

Functions of the Advisory Committee

1 The Advisory Committee shall advise the Commission and Regulatory Committees, as required by this Convention, or as requested by them, on the scientific, technical and environmental aspects of Antarctic mineral resource activities. It shall provide a forum for consultation and cooperation concerning the collection, exchange and evaluation of information related to the scientific, technical and environmental aspects of Antarctic mineral resource activities.

2 It shall provide advice to:

- (a) the Commission relating to its functions under Articles 21(1)(a) to (f), (u) and (x) and 35(7)(a) (in matters relating to scientific research) as well as on the implementation of Article 4; and
- (b) Regulatory Committees with respect to:
 - (i) the implementation of Article 4;
 - (ii) scientific, technical and environmental aspects of Articles 43(3) and (5), 45, 47, 51, 52 and 54;
 - (iii) data to be collected and reported in accordance with Articles 47 and 52; and
 - (iv) the scientific, technical and environmental implications of reports and reported data provided in accordance with Articles 47 and 52.

3 It shall provide advice to the Commission and to Regulatory Committees on:

- (a) criteria in respect of the judgments required under Article 4(2) and (3) for the purposes of Article 4(1);
- (b) types of data and information required to carry out its functions, and how they should be collected, reported and archived;
- (c) scientific research which would contribute to the base of data and information required in subparagraph (b) above;
- (d) effective procedures and systems for data and information analysis, evaluation, presentation and dissemination to facilitate the judgments referred to in Article 4; and

- (e) possibilities for scientific, technical and environmental cooperation amongst interested Parties which are developing countries and other Parties.

4 The Advisory Committee, in providing advice on decisions to be taken in accordance with Articles 41, 43, 45 and 54 shall, in each case, undertake a comprehensive environmental and technical assessment of the proposed actions. Such assessments shall be based on all information, and any amplifications thereof, available to the Advisory Committee, including the information provided pursuant to Articles 39(2)(e), 44(2)(b)(iii) and 53(2)(b). The assessments of the Advisory Committee shall, in each case, address the nature and scope of the decisions to be taken and shall include consideration, as appropriate, of, inter alia:

- (a) the adequacy of existing information to enable informed judgments to be made;
- (b) the nature, extent, duration and intensity of likely direct environmental impacts resulting from the proposed activity;
- (c) possible indirect impacts;
- (d) means and alternatives by which such direct or indirect impacts might be reduced, including environmental consequences of the alternative of not proceeding;
- (e) cumulative impacts of the proposed activity in the light of existing or planned activities;
- (f) capacity to respond effectively to accidents with potential environmental effects;
- (g) the environmental significance of unavoidable impacts; and
- (h) the probabilities of accidents and their environmental consequences.

5 In preparing its advice the Advisory Committee may seek information and advice from other scientists and experts or scientific organisations as may be required on an ad hoc basis.

6 The Advisory Committee shall, with a view to promoting international participation in Antarctic mineral resource activities as provided for in Article 6, provide advice concerning the availability to interested developing country Parties and other Parties, of the information referred to in paragraph 3 above, of training

programmes related to scientific, technical and environmental matters bearing on Antarctic mineral resource activities, and of opportunities for cooperation among Parties in these programmes.

Article 27

Reporting by the Advisory Committee

The Advisory Committee shall present a report on each of its meetings to the Commission and to any relevant Regulatory Committee. The report shall cover all matters considered at the meeting and shall reflect the conclusions reached and all the views expressed by members of the Advisory Committee. The report shall be circulated by the Executive Secretary to all Parties, and to observers attending the meeting, and shall thereupon be made publicly available.

Article 28

Special Meeting of Parties

1 A Special Meeting of Parties shall, as required, be convened in accordance with Article 40(2) and shall have the functions, in relation to the identification of an area for possible exploration and development, specified in Article 40(3).

2 Membership of a Special Meeting of Parties shall be open to all Parties, each of which shall be represented by one representative who may be accompanied by alternate representatives and advisers.

3 Observer status at a Special Meeting of Parties shall be open to any Contracting Party to the Antarctic Treaty which is not a Party to this Convention.

4 Each Special Meeting of Parties shall elect from among its members a Chairman and Vice-Chairman, each of whom shall serve for the duration of that meeting. The Chairman and Vice-Chairman shall not be representatives of the same Party.

5 The Special Meeting of Parties shall, by a two-thirds majority of the members present and voting, adopt its rules of procedure. Until such time as this has been done the Special Meeting of Parties shall apply provisional rules of procedure drawn up by the Commission.

6 Unless the Commission decides otherwise, a Special Meeting of Parties shall be convened by the Executive Secretary and shall be held at the same venue as the meeting of the Commission convened to consider the identification of an area for possible exploration and development.

Article 29

Regulatory Committees

1 An Antarctic Mineral Resources Regulatory Committee shall be established for each area identified by the Commission pursuant to Article 41.

2 Subject to paragraph 6 below, each Regulatory Committee shall consist of 10 members. Membership shall be determined by the Commission in accordance with this Article and, taking into account Article 9, shall include:

- (a) the member, if any, or if there are more than one, those members of the Commission identified by reference to Article 9(b) which assert rights or claims in the identified area;
- (b) the two members of the Commission also identified by reference to Article 9(b) which assert a basis of claim in Antarctica;
- (c) other members of the Commission determined in accordance with this Article so that the Regulatory Committee shall, subject to paragraph 6 below, consist, in total, of 10 members:
 - (i) four members identified by reference to Article 9(b) which assert rights or claims, including the member or members, if any, referred to in subparagraph (a) above; and
 - (ii) six members which do not assert rights or claims as described in Article 9(b), including the two members referred to in subparagraph (b) above.

3 Upon the identification of an area in accordance with Article 41(2), the Chairman of the Commission shall, as soon as possible and in any event within 90 days, make a recommendation to the Commission concerning the membership of the Regulatory Committee. To this end the Chairman shall consult, as appropriate, with the Chairman of the Advisory Committee and all members of the Commission. Such recommendation shall comply with the requirements of paragraphs 2 and 4 of this Article and shall ensure:

- (a) the inclusion of members of the Commission which, whether through prospecting, scientific research or otherwise, have contributed substantial scientific, technical or environmental information relevant to the identification of the area by the Commission pursuant to Article 41;
 - (b) adequate and equitable representation of developing country members of the Commission, having regard to the overall balance between developed and developing country members of the Commission, including at least three developing country members of the Commission;
 - (c) that account is taken of the value of a rotation of membership of Regulatory Committees as a further means of ensuring equitable representation of members of the Commission.
- 4
- (a) When there are one or more members of the Regulatory Committee referred to in paragraph 2(a) above, the Chairman of the Commission shall make the recommendation in respect of paragraph 2(c)(i) above upon the nomination, if any, of such member or members which shall take into account paragraph 3 above, in particular subparagraph (b) of that paragraph.
 - (b) In making the recommendation in respect of paragraph 2(c)(ii) above, the Chairman of the Commission shall give full weight to the views (which shall take into account paragraph 3 above) which may be presented on behalf of those members of the Commission which do not assert rights of or claims to territorial sovereignty in Antarctica and, with reference to the requirements of paragraph 3(b) above, to the views which may be presented on behalf of the developing countries among them.
- 5
- The recommendation of the Chairman of the Commission shall be deemed to have been approved by the Commission if it does not decide otherwise at the same meeting as the recommendation is submitted. In taking any decision in accordance with this Article the Commission shall ensure that the requirements of paragraphs 2 and 3 above are complied with and that the nomination, if any, referred to in paragraph 4(a) above is given effect.
- 6
- (a) If a member of the Commission which has sponsored prospecting in the identified area and submitted the notification pursuant to Article 39 upon which the Commission based its identification of the area pursuant to Article 41, is not a member of the Regulatory Committee by virtue of paragraphs 2 and 3 above, that member of the

Commission shall be a member of the Regulatory Committee until such time as an application for an exploration permit is lodged pursuant to Article 44.

- (b) If a Party lodging an application for an exploration permit pursuant to Article 44 is not a member of the Regulatory Committee by virtue of paragraphs 2 and 3 above, that Party shall be a member of the Regulatory Committee for its consideration of that application. Should such application result in approval of a Management Scheme pursuant to Article 48, the Party in question shall remain a member of the Regulatory Committee during such time as that Management Scheme is in force with the right to take part in decisions on matters affecting that Management Scheme.

7 Nothing in this Article shall be interpreted as affecting Article IV of the Antarctic Treaty.

Article 30

Regulatory Committee Procedure

1 The first meeting of each Regulatory Committee shall be convened by the Executive Secretary in accordance with Article 43(1). Each Regulatory Committee shall meet thereafter when and where necessary to fulfil its functions.

2 Each member of a Regulatory Committee shall be represented by one representative who may be accompanied by alternate representatives and advisers.

3 Each Regulatory Committee shall elect from among its members a Chairman and Vice-Chairman. The Chairman and Vice-Chairman shall not be representatives of the same Party.

4 Any Party may attend meetings of a Regulatory Committee as an observer.

5 Each Regulatory Committee shall adopt its rules of procedure. Such rules may include provisions concerning the period and number of terms of office which the Chairman and Vice-Chairman may serve and for the rotation of such offices.

Article 31

Functions of Regulatory Committees

- 1 The functions of each Regulatory Committee shall be:
- (a) to undertake the preparatory work provided for in Article 43;
 - (b) to consider applications for exploration and development permits in accordance with Articles 45, 46 and 54;
 - (c) to approve Management Schemes and issue exploration and development permits in accordance with Articles 47, 48 and 54;
 - (d) to monitor exploration and development activities in accordance with Article 52;
 - (e) to perform the functions assigned to it in Article 51;
 - (f) to perform the functions relating to inspection assigned to it in Article 12;
 - (g) to perform the functions relating to dispute settlement assigned to it in Article 47(r); and
 - (h) to perform such other functions as are provided for elsewhere in this Convention.

2 In performing its functions each Regulatory Committee shall seek and take full account of the views of the Advisory Committee provided in accordance with Article 26.

3 Each Regulatory Committee shall, subject to Article 16 and measures in effect pursuant to it and Article 21(1)(h), ensure that a publicly available record of its decisions, and of Management Schemes in force, is maintained.

Article 32

Decision Making in Regulatory Committees

1 Decisions by a Regulatory Committee pursuant to Articles 48 and 54(5) shall be taken by a two-thirds majority of the members present and voting, which majority shall include a simple majority of those members present and voting referred to in Article 29(2)(c)(i) and also a simple majority of those members present and voting referred to in Article 29(2)(c)(ii).

2 Decisions by a Regulatory Committee pursuant to Article 43(3) and (5) shall be taken by a two-thirds majority of the members present and voting, which majority shall include at least half of those members present and voting referred to in Article 29(2)(c)(i) and also at least half of those members present and voting referred to in Article 29(2)(c)(ii).

3 Decisions on all other matters of substance shall be taken by a two-thirds majority of the members present and voting. When a question arises as to whether a matter is one of substance or not, that matter shall be treated as one of substance unless otherwise decided by a two-thirds majority of the members present and voting.

4 Decisions on matters of procedure shall be taken by a simple majority of the members present and voting.

5 Nothing in this Article shall be interpreted as preventing a Regulatory Committee, in taking decisions on matters of substance, from endeavouring to reach a consensus.

Article 33

Secretariat

1 The Commission may establish a Secretariat to serve the Commission, Regulatory Committees, the Advisory Committee, the Special Meeting of Parties and any subsidiary bodies established.

2 The Commission may appoint an Executive Secretary, who shall be the head of the Secretariat, according to such procedures and on such terms and conditions as the Commission may determine. The Executive Secretary shall serve for a four year term and may be reappointed.

3 The Commission may, with due regard to the need for efficiency and economy, authorise such staff establishment for the Secretariat as may be necessary. The Executive Secretary shall appoint, direct and supervise the staff according to such rules and procedures and on such terms and conditions as the Commission may determine.

4 The Secretariat shall perform the functions specified in this Convention and, subject to the approved budget, the tasks entrusted to it by the Commission, Regulatory Committees, the Advisory Committee and the Special Meeting of Parties.

Article 34

Cooperation with International Organisations

1 The Commission and, as appropriate, the Advisory Committee shall cooperate with the Antarctic Treaty Consultative Parties, the Contracting Parties to the Convention for the Conservation of Antarctic Seals, the Commission for the Conservation of Antarctic Marine Living Resources, and the Scientific Committee on Antarctic Research.

2 The Commission shall cooperate with the United Nations, its relevant Specialised Agencies, and, as appropriate, any international organisation which may have competence in respect of mineral resources in areas adjacent to those covered by this Convention.

3 The Commission shall also, as appropriate, cooperate with the International Union for the Conservation of Nature and Natural Resources, and with other relevant international organisations, including non-governmental organisations, having a scientific, technical or environmental interest in Antarctica.

4 The Commission may, as appropriate, accord observer status in the Commission and in the Advisory Committee to such relevant international organisations, including non-governmental organisations, as might assist in the work of the institution in question. Observer status at a Special Meeting of Parties shall be open to such organisations as have been accorded observer status in the Commission or the Advisory Committee.

5 The Commission may enter into agreements with the organisations referred to in this Article.

Article 35

Financial Provisions

1 The Commission shall adopt a budget, on an annual or other appropriate basis, for:

- (a) its activities and the activities of Regulatory Committees, the Advisory Committee, the Special Meeting of Parties, any subsidiary bodies established and the Secretariat; and
- (b) the progressive reimbursement of any contributions paid under paragraphs 5 and 6 below whenever revenues under paragraph 4 below exceed expenditure.

2 The first draft budget shall be submitted by the Depositary at least 90 days before the first meeting of the Commission. At that meeting the Commission shall adopt its first budget and decide upon arrangements for the preparation of subsequent budgets.

3 The Commission shall adopt financial regulations.

4 Subject to paragraph 5 below, the budget shall be financed, inter alia, by:

- (a) fees prescribed pursuant to Articles 21(1)(p) and 43(2)(b);
- (b) levies on Operators, subject to any measures adopted by the Commission in accordance with Article 21(1)(q), pursuant to Article 47(k)(i); and
- (c) such other financial payments by Operators pursuant to Article 47(k)(ii) as may be required to be paid to the institutions of this Convention.

5 If the budget is not fully financed by revenues in accordance with paragraph 4 above, and subject to reimbursement in accordance with paragraph 1(b) above, the budget shall, to the extent of any shortfall and subject to paragraph 6 below, be financed by contributions from the members of the Commission. To this end, the Commission shall adopt as soon as possible a method of equitable sharing of contributions to the budget. The budget shall, in the meantime, to the extent of any shortfall, be financed by equal contributions from each member of the Commission.

6 In adopting the method of contributions referred to in paragraph 5 above the Commission shall consider the extent to which members of and observers at institutions of this Convention may be called upon to contribute to the costs of those institutions.

7 The Commission, in determining the disposition of revenues accruing to it, which are surplus to the requirements for financing the budget pursuant to this Article, shall:

- (a) promote scientific research in Antarctica, particularly that related to the Antarctic environment and Antarctic resources, and a wide spread of participation in such research by all Parties, in particular developing country Parties;
- (b) ensure that the interests of the members of Regulatory Committees having the most direct interest in the matter in relation to the areas in question are respected in any disposition of that surplus.

8 The finances of the Commission, Regulatory Committees, the Advisory Committee, the Special Meeting of Parties, any subsidiary bodies established and the Secretariat shall accord with the financial regulations adopted by the Commission and shall be subject to an annual audit by external auditors selected by the Commission.

9 Each member of the Commission, Regulatory Committees, the Advisory Committee, the Special Meeting of Parties and any subsidiary bodies established, as well as any observer at a meeting of any of the institutions of this Convention, shall meet its own expenses arising from attendance at meetings.

10 A member of the Commission that fails to pay its contribution for two consecutive years shall not, during the period of its continuing subsequent default, have the right to participate in the taking of decisions in any of the institutions of this Convention. If it continues to be in default for a further two consecutive years, the Commission shall decide what further action should be taken, which may include loss by that member of the right to participate in meetings of the institutions of this Convention. Such member shall resume the full enjoyment of its rights upon payment of the outstanding contributions.

11 Nothing in this Article shall be construed as prejudicing the position of any member of a Regulatory Committee on the outcome of consideration by the Regulatory Committee of terms and conditions in a Management Scheme pursuant to Article 47(k)(ii).

Article 36

Official and Working Languages

The official and working languages of the Commission, Regulatory Committees, the Advisory Committee, the Special Meeting of Parties and any meeting convened under Article 64 shall be English, French, Russian and Spanish.

CHAPTER III : PROSPECTING

Article 37

Prospecting

1 Prospecting shall not confer upon any Operator any right to Antarctic mineral resources.

2 Prospecting shall at all times be conducted in compliance with this Convention and with measures in effect pursuant to this Convention, but shall not require authorisation by the institutions of this Convention.

3 (a) The Sponsoring State shall ensure that its Operators undertaking prospecting maintain the necessary financial and technical means to comply with Article 8(1), and, to the extent that any such Operator fails to take response action as required in Article 8(1), shall ensure that this is undertaken.

(b) The Sponsoring State shall also ensure that its Operators undertaking prospecting maintain financial capacity, commensurate with the nature and level of the activity undertaken and the risks involved, to comply with Article 8(2).

4 In cases where more than one Operator is engaged in prospecting in the same general area, the Sponsoring State or States shall ensure that those Operators conduct their activities with due regard to each others' rights.

5 Where an Operator wishes to conduct prospecting in an area identified under Article 41 in which another Operator has been authorised to undertake exploration or development, the Sponsoring State shall ensure that such prospecting is carried out subject to the rights of any authorised Operator and any requirements to protect its rights specified by the relevant Regulatory Committee.

6 Each Operator shall ensure upon cessation of prospecting the removal of all installations and equipment and site rehabilitation. On the request of the Sponsoring State, the Commission may waive the obligation to remove installations and equipment.

7 The Sponsoring State shall notify the Commission at least nine months in advance of the commencement of planned prospecting. The notification shall be accompanied by such fees as may be established by the Commission in accordance with Article 21(1)(p) and shall:

- (a) identify, by reference to coordinates of latitude and longitude or identifiable geographic features, the general area in which the prospecting is to take place;
- (b) broadly identify the mineral resource or resources which are to be the subject of the prospecting;
- (c) describe the prospecting, including the methods to be used, and the general programme of work to be undertaken and its expected duration;
- (d) provide an assessment of the possible environmental and other impacts of the prospecting, taking into account possible cumulative impacts as referred to in Article 4(5);
- (e) describe the measures, including monitoring programmes, to be adopted to avoid harmful environmental consequences or undue interference with other established uses of Antarctica, and outline the measures to be put into effect in the event of any accident and contingency plans for evacuation in an emergency;
- (f) provide details on the Operator and certify that it:
 - (i) has a substantial and genuine link with the Sponsoring State as defined in Article 1(12); and
 - (ii) is financially and technically qualified to carry out the proposed prospecting in accordance with this Convention; and
- (g) provide such further information as may be required by measures adopted by the Commission.

8 The Sponsoring State shall subsequently provide to the Commission:

- (a) notification of any changes to the information referred to in paragraph 7 above;
- (b) notification of the cessation of prospecting, including removal of any installations and equipment as well as site rehabilitation; and
- (c) a general annual report on the prospecting undertaken by the Operator.

9 Notifications and reports submitted pursuant to this Article shall be circulated by the Executive Secretary without delay to all Parties and observers attending Commission meetings.

10 Paragraphs 7, 8 and 9 above shall not be interpreted as requiring the disclosure of data and information of commercial value.

11 The Sponsoring State shall ensure that basic data and information of commercial value generated by prospecting are maintained in archives and may at any time release part of or all such data and information, on conditions which it shall establish, for scientific or environmental purposes.

12 The Sponsoring State shall ensure that basic data and information, other than interpretative data, generated by prospecting are made readily available when such data and information are not, or are no longer, of commercial value and, in any event, no later than 10 years after the year the data and information were collected, unless it certifies to the Commission that the data and information continue to have commercial value. It shall review at regular intervals whether such data and information may be released and shall report the results of such reviews to the Commission.

13 The Commission may adopt measures consistent with this Article relating to the release of data and information of commercial value including requirements for certifications, the frequency of reviews and maximum time limits for extensions of the protection of such data and information.

Article 38

Consideration of Prospecting by the Commission

1 If a member of the Commission considers that a notification submitted in accordance with Article 37(7) or (8), or ongoing prospecting, causes concern as to consistency with this Convention or measures in effect pursuant thereto, that member may request the Sponsoring State to provide a clarification. If that member considers that an adequate response is not forthcoming from the Sponsoring State within a reasonable time, the member may request that the Commission be convened in accordance with Article 19(2)(b) to consider the question and take appropriate action.

2 If measures applicable to all relevant Operators are adopted by the Commission following a request made in accordance with paragraph 1 above, Sponsoring States that have submitted notifications in accordance with Article 37(7) or (8), and Sponsoring States whose Operators are conducting prospecting, shall ensure that the plans and

activities of their Operators are modified to the extent necessary to conform with those measures within such time limit as the Commission may prescribe, and shall notify the Commission accordingly.

CHAPTER IV : EXPLORATION

Article 39

Requests for Identification of an Area for Possible Exploration and Development

1 Any Party may submit to the Executive Secretary a notification requesting that the Commission identify an area for possible exploration and development of a particular mineral resource or resources.

2 Any such notification shall be accompanied by such fees as may be established by the Commission in accordance with Article 21(1)(p) and shall contain:

- (a) a precise delineation, including coordinates, of the area proposed for identification;
- (b) specification of the resource or resources for which the area would be identified and any relevant data and information, excluding data and information of commercial value, concerning that resource or those resources, including a geological description of the proposed area;
- (c) a detailed description of the physical and environmental characteristics of the proposed area;
- (d) a description of the likely scale of exploration and development for the resource or resources involved in the proposed area and of the methods which could be employed in such exploration and development;
- (e) a detailed assessment of the environmental and other impacts of possible exploration and development for the resource or resources involved, taking into account Articles 15 and 26(4); and
- (f) such other information as may be required pursuant to measures adopted by the Commission.

3 A notification under paragraph 1 above shall be referred promptly by the Executive Secretary to all Parties and shall be circulated to observers attending the meeting of the Commission to be convened pursuant to Article 19(2)(a).

Article 40

Action by the Advisory Committee and Special Meeting of Parties

1 The Advisory Committee shall meet as soon as possible after the meeting of the Commission convened pursuant to Article 19(2)(a) has commenced. The Advisory Committee shall provide advice to the Commission on the notification submitted pursuant to Article 39(1). The Commission may prescribe a time limit for the provision of such advice.

2 A Special Meeting of Parties shall meet as soon as possible after circulation of the report of the Advisory Committee and in any event not later than two months after that report has been circulated.

3 The Special Meeting of Parties shall consider whether identification of an area by the Commission in accordance with the request contained in the notification would be consistent with this Convention, and shall report thereon to the Commission as soon as possible and in any event not later than 21 days from the commencement of the meeting.

4 The report of the Special Meeting of Parties to the Commission shall reflect the conclusions reached and all the views expressed by Parties participating in the meeting.

Article 41

Action by the Commission

1 The Commission shall, as soon as possible after receipt of the report of the Special Meeting of Parties, consider whether or not it will identify an area as requested. Taking full account of the views and giving special weight to the conclusions of the Special Meeting of Parties, and taking full account of the views and the conclusions of the Advisory Committee, the Commission shall determine whether such identification would be consistent with this Convention. For this purpose:

- (a) the Commission shall ensure that an area to be identified shall be such that, taking into account all factors relevant to such identification, including the physical, geological, environmental and other characteristics of such area, it forms a coherent unit for the purposes of resource management. The Commission shall thus consider whether an area to be identified should include all or part of that which was requested in the notification and, subject to the necessary assessments having been made, adjacent areas not covered by that notification;
- (b) the Commission shall consider whether there are, within an area requested or to be identified, any areas in which exploration and development are or should be prohibited or restricted in accordance with Article 13;
- (c) the Commission shall specify the mineral resource or resources for which the area would be identified;
- (d) the Commission shall give effect to Article 6, by elaborating opportunities for joint ventures or different forms of participation, up to a defined level, including procedures for offering such participation, in possible exploration and development, within the area, by interested Parties which are Antarctic Treaty Consultative Parties and by other interested Parties, in particular, developing countries in either category;
- (e) the Commission shall prescribe any additional associated conditions necessary to ensure that an area to be identified is consistent with other provisions of this Convention and may prescribe general guidelines relating to the operational requirements for exploration and development in an area to be identified including measures establishing maximum block sizes and advice concerning related support activities; and
- (f) the Commission shall give effect to the requirement in Article 59 to establish additional procedures for the settlement of disputes.

2 After it has completed its consideration in accordance with paragraph 1 above, the Commission shall identify an area for possible exploration and development if there is a consensus of Commission members that such identification is consistent with this Convention.

Article 42

Revision in the Scope of an Identified Area

1 If, after an area has been identified in accordance with Article 41, a Party requests identification of an area, all or part of which is contained within the boundaries of the area already identified but in respect of a mineral resource or resources different from any resource in respect of which the area has already been identified, the request shall be dealt with in accordance with Articles 39, 40 and 41. Should the Commission identify an area in respect of such different mineral resource or resources, it shall have regard, in addition to the requirements of Article 41(1)(a), to the desirability of specifying the boundaries of the area in such a way that it can be assigned to the Regulatory Committee with competence for the area already identified.

2 In the light of increased knowledge bearing on the effective management of the area, and after seeking the views of the Advisory Committee and the relevant Regulatory Committee, the Commission may amend the boundaries of any area it has identified. In making any such amendment the Commission shall ensure that authorised exploration and development in the area are not adversely affected. Unless there are compelling reasons for doing so, the Commission shall not amend the boundaries of an area it has identified in such a way as to involve a change in the composition of the relevant Regulatory Committee.

Article 43

Preparatory Work by Regulatory Committees

1 As soon as possible after the identification of an area pursuant to Article 41, the relevant Regulatory Committee established in accordance with Article 29 shall be convened.

2 The Regulatory Committee shall:

- (a) subject to any measures adopted by the Commission pursuant to Article 21(1)(j) relating to maximum block sizes, divide its area of competence into blocks in respect of which applications for exploration and development may be submitted and make provision for a limit in appropriate circumstances on the number of blocks to be accorded to any Party;

- (b) subject to any measures adopted by the Commission pursuant to Article 21(1)(p), establish fees to be paid with any application for an exploration or development permit lodged pursuant to Article 44 or 53;
- (c) establish periods within which applications for exploration and development may be lodged, all applications received within each such period being considered as simultaneous;
- (d) establish procedures for the handling of applications; and
- (e) determine a method of resolving competing applications which are not resolved in accordance with Article 45(4)(a), which method shall, provided that all other requirements of this Convention are satisfied and consistently with measures adopted pursuant to Article 41(1)(d), include priority for the application with the broadest participation among interested Parties which are Antarctic Treaty Consultative Parties and other interested Parties, in particular, developing countries in either category.

3 The Regulatory Committee shall adopt guidelines which are consistent with, and which taken together with, the provisions of this Convention and measures of general applicability adopted by the Commission, as well as associated conditions and general guidelines adopted by the Commission when identifying the area, shall, by addressing the relevant items in Article 47, identify the general requirements for exploration and development in its area of competence.

4 Upon adoption of guidelines under paragraph 3 above the Executive Secretary shall, without delay, inform all members of the Commission of the decisions taken by the Regulatory Committee pursuant to paragraphs 2 and 3 above and shall make them publicly available together with relevant measures, associated conditions and general guidelines adopted by the Commission.

5 The Regulatory Committee may from time to time revise guidelines adopted under paragraph 3 above, taking into account any views of the Commission.

6 In performing its functions under paragraphs 3 and 5 above, the Regulatory Committee shall seek and take full account of the views of the Advisory Committee provided in accordance with Article 26.

Article 44

Application for an Exploration Permit

1 Following completion of the work undertaken pursuant to Article 43, any Party, on behalf of an Operator for which it is the Sponsoring State, may lodge with the Regulatory Committee an application for an exploration permit within the periods established by the Regulatory Committee pursuant to Article 43(2)(c).

2 An application shall be accompanied by the fees established by the Regulatory Committee in accordance with Article 43(2)(b) and shall contain:

- (a) a detailed description of the Operator, including its managerial structure, financial composition and resources and technical expertise, and, in the case of an Operator being a joint venture, the inclusion of a detailed description of the degree to which Parties are involved in the Operator through, inter alia, juridical persons with which Parties have substantial and genuine links, so that each component of the joint venture can be easily attributed to a Party or Parties for the purposes of identifying the level of Antarctic mineral resource activities thereof, which description of substantial and genuine links shall include a description of equity sharing;
- (b) a detailed description of the proposed exploration activities and a description in as much detail as possible of proposed development activities, including:
 - (i) an identification of the mineral resource or resources and the block to which the application applies;
 - (ii) a detailed explanation of how the proposed activities conform with the general requirements referred to in Article 43(3);
 - (iii) a detailed assessment of the environmental and other impacts of the proposed activities, taking into account Articles 15 and 26(4); and
 - (iv) a description of the capacity to respond effectively to accidents, especially those with potential environmental effects;
- (c) a certification by the Sponsoring State of the capacity of the Operator to comply with the general requirements referred to in Article 43(3);

- (d) a certification by the Sponsoring State of the technical competence and financial capacity of the Operator and that the Operator has a substantial and genuine link with it as defined in Article 1(12);
- (e) a description of the manner in which the application complies with any measures adopted by the Commission pursuant to Article 41(1)(d); and
- (f) such further information as may be required by the Regulatory Committee or in measures adopted by the Commission.

Article 45

Examination of Applications

1 The Regulatory Committee shall meet as soon as possible after an application has been lodged pursuant to Article 44, for the purpose of elaborating a Management Scheme. In performing this function it shall:

- (a) determine whether the application contains sufficient or adequate information pursuant to Article 44(2). To this end, it may at any time seek further information from the Sponsoring State consistent with Article 44(2);
- (b) consider the exploration and development activities proposed in the application, and such elaborations, revisions or adaptations as necessary:
 - (i) to ensure their consistency with this Convention as well as measures in effect pursuant thereto and the general requirements referred to in Article 43(3); and
 - (ii) to prescribe the specific terms and conditions of a Management Scheme in accordance with Article 47.

2 At any time during the process of consideration described above, the Regulatory Committee may decline the application if it considers that the activities proposed therein cannot be elaborated, revised or adapted to ensure consistency with this Convention as well as measures in effect pursuant thereto and the general requirements referred to in Article 43(3).

3 In performing its functions under this Article, the Regulatory Committee shall seek and take full account of the views of the Advisory Committee. To that end the Regulatory Committee shall refer to the Advisory Committee all parts of the application which are necessary for it to provide advice pursuant to Article 26, together with any other relevant information.

4 If two or more applications meeting the requirements of Article 44(2) are lodged in respect of the same block:

- (a) the competing applicants shall be invited by the Regulatory Committee to resolve the competition amongst themselves, by means of their own choice within a prescribed period;
- (b) if the competition is not resolved pursuant to subparagraph (a) above it shall be resolved by the Regulatory Committee in accordance with the method determined by it pursuant to Article 43(2)(e).

Article 46

Management Scheme

In performing its functions under Article 45, including the preparation of a Management Scheme, and under Article 54, the Regulatory Committee shall have recourse to the Sponsoring State and the member or members, if any, referred to in Article 29(2)(a) and, as may be required, one or two additional members of the Regulatory Committee.

Article 47

Scope of the Management Scheme

The Management Scheme shall prescribe the specific terms and conditions for exploration and development of the mineral resource or resources concerned within the relevant block. Such terms and conditions shall be consistent with the general requirements referred to in Article 43(3), and shall cover, inter alia:

- (a) duration of exploration and development permits;
- (b) measures and procedures for the protection of the Antarctic environment and dependent and associated ecosystems, including methods, activities and undertakings by the Operator to minimise environmental risks and damage;

- (c) provision for necessary and timely response action, including prevention, containment and clean up and removal measures, for restoration to the status quo ante, and for contingency plans, resources and equipment to enable such action to be taken;
- (d) procedures for the implementation of different stages of exploration and development;
- (e) performance requirements;
- (f) technical and safety specifications, including standards and procedures to ensure safe operations;
- (g) monitoring and inspection;
- (h) liability;
- (i) procedures for the development of mineral deposits which extend outside the area covered by a permit;
- (j) resource conservation requirements;
- (k) financial obligations of the Operator including:
 - (i) levies in accordance with measures adopted pursuant to Article 21(1)(q);
 - (ii) payments in the nature of and similar to taxes, royalties or payments in kind;
- (l) financial guarantees and insurance;
- (m) assignment and relinquishment;
- (n) suspension and modification of the Management Scheme, or cancellation of the Management Scheme, exploration or development permit, and the imposition of monetary penalties, in accordance with Article 51;
- (o) procedures for agreed modifications;
- (p) enforcement of the Management Scheme;
- (q) applicable law to the extent necessary;
- (r) effective additional procedures for the settlement of disputes;
- (s) provisions to avoid and to resolve conflict with other legitimate uses of Antarctica;
- (t) data and information collection, reporting and notification requirements;

- (u) confidentiality; and
- (v) removal of installations and equipment, as well as site rehabilitation.

Article 48

Approval of the Management Scheme

A Management Scheme prepared in accordance with Articles 45, 46 and 47 shall be subject to approval pursuant to Article 32. Such approval shall constitute authorisation for the issue without delay of an exploration permit by the Regulatory Committee. The exploration permit shall accord exclusive rights to the Operator to explore and, subject to Articles 53 and 54, to develop the mineral resource or resources which are the subject of the Management Scheme exclusively in accordance with the terms and conditions of the Management Scheme.

Article 49

Review

1 Any member of the Commission, or any member of a Regulatory Committee, may within one month of a decision by that Regulatory Committee to approve a Management Scheme or issue a development permit, request that the Commission be convened in accordance with Article 19(2)(b) or (c), as the case may be, to review the decision of the Regulatory Committee for consistency with the decision taken by the Commission to identify the area pursuant to Article 41 and any measures in effect relevant to that decision.

2 The Commission shall complete its consideration within three months of a request made pursuant to paragraph 1 above. In performing its functions the Commission shall not assume the functions of the Regulatory Committee, nor shall it substitute its discretion for that of the Regulatory Committee.

3 Should the Commission determine that a decision to approve a Management Scheme or issue a development permit is inconsistent with the decision taken by the Commission to identify the area pursuant to Article 41 and any measures in effect relevant to that decision, it may request that Regulatory Committee to reconsider its decision.

Article 50

Rights of Authorised Operators

1 No Management Scheme shall be suspended or modified and no Management Scheme, exploration or development permit shall be cancelled without the consent of the Sponsoring State except pursuant to Article 51, or Article 54 or the Management Scheme itself.

2 Each Operator authorised to conduct activities pursuant to a Management Scheme shall exercise its rights with due regard to the rights of other Operators undertaking exploration or development in the same identified area.

Article 51

Suspension, Modification or Cancellation of the Management Scheme and Monetary Penalties

1 If a Regulatory Committee determines that exploration or development authorised pursuant to a Management Scheme has resulted or is about to result in impacts on the Antarctic environment or dependent or associated ecosystems beyond those judged acceptable pursuant to this Convention, it shall suspend the relevant activities and as soon as possible modify the Management Scheme so as to avoid such impacts. If such impacts cannot be avoided by the modification of the Management Scheme, the Regulatory Committee shall suspend it, or cancel it and the exploration or development permit.

2 In performing its functions under paragraph 1 above a Regulatory Committee shall, unless emergency action is required, seek and take into account the views of the Advisory Committee.

3 If a Regulatory Committee determines that an Operator has failed to comply with this Convention or with measures in effect pursuant to it or a Management Scheme applicable to that Operator, the Regulatory Committee may do all or any of the following:

- (a) modify the Management Scheme;
- (b) suspend the Management Scheme;
- (c) cancel the Management Scheme and the exploration or development permit; and
- (d) impose a monetary penalty.

4 Sanctions determined pursuant to paragraph 3(a) to (d) above shall be proportionate to the seriousness of the failure to comply.

5 A Regulatory Committee shall cancel a Management Scheme and the exploration or development permit if an Operator ceases to have a substantial and genuine link with the Sponsoring State as defined in Article 1(12).

6 The Commission shall adopt general measures, which may include mitigation, relating to action by Regulatory Committees pursuant to paragraphs 1 and 3 above and, as appropriate, to the consequences of such action. No application pursuant to Article 44 may be lodged until such measures have come into effect.

Article 52

Monitoring in Relation to Management Schemes

1 Each Regulatory Committee shall monitor the compliance of Operators with Management Schemes within its area of competence.

2 Each Regulatory Committee, taking into account the advice of the Advisory Committee, shall monitor and assess the effects on the Antarctic environment and on dependent and on associated ecosystems of Antarctic mineral resource activities within its area of competence, particularly by reference to key environmental parameters and ecosystem components.

3 Each Regulatory Committee shall, as appropriate, inform the Commission and the Advisory Committee in a timely fashion of monitoring under this Article.

CHAPTER V : DEVELOPMENT

Article 53

Application for a Development Permit

1 At any time during the period in which an approved Management Scheme and exploration permit are in force for an Operator, the Sponsoring State may, on behalf of that Operator, lodge with the Regulatory Committee an application for a development permit.

2 An application shall be accompanied by the fees established by the Regulatory Committee in accordance with Article 43(2)(b) and shall contain:

- (a) an updated description of the planned development identifying any modifications proposed to the approved Management Scheme and any additional measures to be taken, consequent upon such modifications, to ensure consistency with this Convention, including any measures in effect pursuant thereto and the general requirements referred to in Article 43(3);
- (b) a detailed assessment of the environmental and other impacts of the planned development, taking into account Articles 15 and 26(4);
- (c) a recertification by the Sponsoring State of the technical competence and financial capacity of the Operator and that the Operator has a substantial and genuine link with it as defined in Article 1(12);
- (d) a recertification by the Sponsoring State of the capacity of the Operator to comply with the general requirements referred to in Article 43(3);
- (e) updated information in relation to all other matters specified in Article 44(2); and
- (f) such further information as may be required by the Regulatory Committee or in measures adopted by the Commission.

Article 54

Examination of Applications and Issue of Development Permits

1 The Regulatory Committee shall meet as soon as possible after an application has been lodged pursuant to Article 53.

2 The Regulatory Committee shall determine whether the application contains sufficient or adequate information pursuant to Article 53(2). In performing this function it may at any time seek further information from the Sponsoring State consistent with Article 53(2).

3 The Regulatory Committee shall consider whether:

- (a) the application reveals modifications to the planned development previously envisaged;

(b) the planned development would cause previously unforeseen impacts on the Antarctic environment or dependent or associated ecosystems, either as a result of any modifications referred to in subparagraph (a) above or in the light of increased knowledge.

4 The Regulatory Committee shall consider any modifications to the Management Scheme necessary in the light of paragraph 3 above to ensure that the development activities proposed would be undertaken consistently with this Convention as well as measures in effect pursuant thereto and the general requirements referred to in Article 43(3). However, the financial obligations specified in the approved Management Scheme may not be revised without the consent of the Sponsoring State, unless provided for in the Management Scheme itself.

5 If the Regulatory Committee in accordance with Article 32 approves modifications under paragraph 4 above, or if it does not consider that such modifications are necessary, the Regulatory Committee shall issue without delay a development permit.

6 In performing its functions under this Article, the Regulatory Committee shall seek and take full account of the views of the Advisory Committee. To that end the Regulatory Committee shall refer to the Advisory Committee all parts of the application which are necessary for it to provide advice pursuant to Article 26, together with any other relevant information.

CHAPTER VI : DISPUTES SETTLEMENT

Article 55

Disputes Between Two or More Parties

Articles 56, 57 and 58 apply to disputes between two or more Parties.

Article 56

Choice of Procedure

1 Each Party, when signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, may choose, by written declaration, one or

both of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

- (a) the International Court of Justice;
- (b) the Arbitral Tribunal.

2 A declaration made under paragraph 1 above shall not affect the operation of Article 57(1), (3), (4) and (5).

3 A Party that has not made a declaration under paragraph 1 above or in respect of which a declaration is no longer in force shall be deemed to have accepted the competence of the Arbitral Tribunal.

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

5 If the parties to a dispute have not accepted the same means for the settlement of a dispute, or if they have both accepted both means, the dispute may be submitted only to the Arbitral Tribunal, unless the parties otherwise agree.

6 A declaration made under paragraph 1 above shall remain in force until it expires in accordance with its terms or until 3 months after written notice of revocation has been deposited with the Depositary.

7 A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the Arbitral Tribunal, unless the parties to the dispute otherwise agree.

8 Declarations and notices referred to in this Article shall be deposited with the Depositary who shall transmit copies thereof to all Parties.

Article 57

Procedure for Dispute Settlement

1 If a dispute arises concerning the interpretation or application of this Convention, the parties to the dispute shall, at the request of any one of them, consult among themselves as soon as possible with a view to having the dispute resolved by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their choice.

2 If the parties to a dispute concerning the interpretation or application of this Convention have not agreed on a means for resolving it within 12 months of the request for consultation pursuant to paragraph 1 above, the dispute shall be referred, at the request of any party to the dispute, for settlement in accordance with the procedure determined by the operation of Article 56(4) and (5).

3 If a dispute concerning the interpretation or application of this Convention relates to a measure in effect pursuant to this Convention or a Management Scheme and the parties to such a dispute:

- (a) have not agreed on a means for resolving the dispute within 6 months of the request for consultation pursuant to paragraph 1 above, the dispute shall be referred, at the request of any party to the dispute, for discussion in the institution which adopted the instrument in question;
- (b) have not agreed on a means for resolving the dispute within 12 months of the request for consultation pursuant to paragraph 1 above, the dispute shall be referred for settlement, at the request of any party to the dispute, to the Arbitral Tribunal.

4 The Arbitral Tribunal shall not be competent to decide or otherwise rule upon any matter within the scope of Article 9. In addition, nothing in this Convention shall be interpreted as conferring competence or jurisdiction on the International Court of Justice or any other tribunal established for the purpose of settling disputes between Parties to decide or otherwise rule upon any matter within the scope of Article 9.

5 The Arbitral Tribunal shall not be competent with regard to the exercise by an institution of its discretionary powers in accordance with this Convention; in no case shall the Arbitral Tribunal substitute its discretion for that of an institution. In addition, nothing in this Convention shall be interpreted as conferring competence or jurisdiction on the International Court of Justice or any other tribunal established for the purpose of settling disputes between Parties with regard to the exercise by an institution of its discretionary powers or to substitute its discretion for that of an institution.

Article 58

Exclusion of Categories of Disputes

1 Any Party, when signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, may, by written declaration, exclude the operation of Article 57(2) or (3) without its consent with respect to a category or categories of disputes specified in the declaration. Such declaration may not cover disputes concerning the interpretation or application of:

- (a) any provision of this Convention or of any measure in effect pursuant to it relating to the protection of the Antarctic environment or dependent or associated ecosystems;
- (b) Article 7(1);
- (c) Article 8;
- (d) Article 12;
- (e) Article 14;
- (f) Article 15; or
- (g) Article 37.

2 Nothing in paragraph 1 above or in any declaration made under it shall affect the operation of Article 57(1), (4) and (5).

3 A declaration made under paragraph 1 above shall remain in force until it expires in accordance with its terms or until 3 months after written notice of revocation has been deposited with the Depositary.

4 A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the Arbitral Tribunal, unless the parties to the dispute otherwise agree.

5 Declarations and notices referred to in this Article shall be deposited with the Depositary who shall transmit copies thereof to all Parties.

6 A Party which, by declaration made under paragraph 1 above, has excluded a specific category or categories of disputes from the operation of Article 57(2) or (3) without its consent shall not be entitled to submit any dispute falling within that category or those categories

for settlement pursuant to Article 57(2) or (3), as the case may be, without the consent of the other party or parties to the dispute.

Article 59

Additional Dispute Settlement Procedures

1 The Commission, in conjunction with its responsibilities pursuant to Article 41(1), shall establish additional procedures for third-party settlement, by the Arbitral Tribunal or through other similar procedures, of disputes which may arise if it is alleged that a violation of this Convention has occurred by virtue of:

- (a) a decision to decline a Management Scheme;
- (b) a decision to decline the issue of a development permit; or
- (c) a decision to suspend, modify or cancel a Management Scheme or to impose monetary penalties.

2 Such procedures shall:

- (a) permit, as appropriate, Parties and Operators under their sponsorship, but not both in respect of any particular dispute, to initiate proceedings against a Regulatory Committee;
- (b) require disputes to which they relate to be referred in the first instance to the relevant Regulatory Committee for consideration;
- (c) incorporate the rules in Article 57(4) and (5).

CHAPTER VII : FINAL CLAUSES

Article 60

Signature

This Convention shall be open for signature at Wellington from 25 November 1988 to 25 November 1989 by States which participated in the final session of the Fourth Special Antarctic Treaty Consultative Meeting.

Article 61

Ratification, Acceptance, Approval or Accession

- 1 This Convention is subject to ratification, acceptance or approval by Signatory States.
- 2 After 25 November 1989 this Convention shall be open for accession by any State which is a Contracting Party to the Antarctic Treaty.
- 3 Instruments of ratification, acceptance, approval or accession shall be deposited with the Government of New Zealand, hereby designated as the Depositary.

Article 62

Entry Into Force

- 1 This Convention shall enter into force on the thirtieth day following the date of deposit of instruments of ratification, acceptance, approval or accession by 16 Antarctic Treaty Consultative Parties which participated as such in the final session of the Fourth Special Antarctic Treaty Consultative Meeting, provided that number includes all the States necessary in order to establish all of the institutions of the Convention in respect of every area of Antarctica, including 5 developing countries and 11 developed countries.
- 2 For each State which, subsequent to the date of entry into force of this Convention, deposits an instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day following such deposit.

Article 63

Reservations, Declarations and Statements

- 1 Reservations to this Convention shall not be permitted. This does not preclude a State, when signing, ratifying, accepting, approving or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonisation of its laws and regulations with this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of this Convention in its application to that State.

2 The provisions of this Article are without prejudice to the right to make written declarations in accordance with Article 58.

Article 64

Amendment

1 This Convention shall not be subject to amendment until after the expiry of 10 years from the date of its entry into force. Thereafter, any Party may, by written communication addressed to the Depositary, propose a specific amendment to this Convention and request the convening of a meeting to consider such proposed amendment.

2 The Depositary shall circulate such communication to all Parties. If within 12 months of the date of circulation of the communication at least one-third of the Parties reply favourably to the request, the Depositary shall convene the meeting.

3 The adoption of an amendment considered at such a meeting shall require the affirmative votes of two-thirds of the Parties present and voting, including the concurrent votes of the members of the Commission attending the meeting.

4 The adoption of any amendment relating to the Special Meeting of Parties or to the Advisory Committee shall require the affirmative votes of three-quarters of the Parties present and voting, including the concurrent votes of the members of the Commission attending the meeting.

5 An amendment shall enter into force for those Parties having deposited instruments of ratification, acceptance or approval thereof 30 days after the Depositary has received such instruments of ratification, acceptance or approval from all the members of the Commission.

6 Such amendment shall thereafter enter into force for any other Party 30 days after the Depositary has received its instrument of ratification, acceptance or approval thereof.

7 An amendment that has entered into force pursuant to this Article shall be without prejudice to the provisions of any Management Scheme approved before the date on which the amendment entered into force.

Article 65**Withdrawal**

1 Any Party may withdraw from this Convention by giving to the Depositary notice in writing of its intention to withdraw. Withdrawal shall take effect two years after the date of receipt of such notice by the Depositary.

2 Any Party which ceases to be a Contracting Party to the Antarctic Treaty shall be deemed to have withdrawn from this Convention on the date that it ceases to be a Contracting Party to the Antarctic Treaty.

3 Where an amendment has entered into force pursuant to Article 64(5), any Party from which no instrument of ratification, acceptance or approval of the amendment has been received by the Depositary within a period of two years from the date of the entry into force of the amendment shall be deemed to have withdrawn from this Convention on the date of the expiration of a further two year period.

4 Subject to paragraphs 5 and 6 below, the rights and obligations of any Operator pursuant to this Convention shall cease at the time its Sponsoring State withdraws or is deemed to have withdrawn from this Convention.

5 Such Sponsoring State shall ensure that the obligations of its Operators have been discharged no later than the date on which its withdrawal takes effect.

6 Withdrawal from this Convention by any Party shall not affect its financial or other obligations under this Convention pending on the date withdrawal takes effect. Any dispute settlement procedure in which that Party is involved and which has been commenced prior to that date shall continue to its conclusion unless agreed otherwise by the parties to the dispute.

Article 66**Notifications by the Depositary**

The Depositary shall notify all Contracting Parties to the Antarctic Treaty of the following:

- (a) signatures of this Convention and the deposit of instruments of ratification, acceptance, approval or accession;

- (b) the deposit of instruments of ratification, acceptance or approval of any amendment adopted pursuant to Article 64;
- (c) the date of entry into force of this Convention and of any amendment thereto;
- (d) the deposit of declarations and notices pursuant to Articles 56 and 58;
- (e) notifications pursuant to Article 18; and
- (f) the withdrawal of a Party pursuant to Article 65.

Article 67

Authentic Texts, Certified Copies and Registration with the United Nations

1 This Convention of which the Chinese, English, French, Russian and Spanish texts are equally authentic shall be deposited with the Government of New Zealand which shall transmit duly certified copies thereof to all Signatory and Acceding States.

2 The Depositary shall also transmit duly certified copies to all Signatory and Acceding States of the text of this Convention in any additional language of a Signatory or Acceding State which submits such text to the Depositary.

3 This Convention shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.

Done at Wellington this second day of June 1988.

In witness whereof, the undersigned, duly authorised, have signed this Convention.

ANNEX FOR AN ARBITRAL TRIBUNALArticle 1

The Arbitral Tribunal shall be constituted and shall function in accordance with this Convention, including this Annex.

Article 2

1 Each Party shall be entitled to designate up to three Arbitrators, at least one of whom shall be designated within three months of the entry into force of this Convention for that Party. Each Arbitrator shall be experienced in Antarctic affairs, with knowledge of international law and enjoying the highest reputation for fairness, competence and integrity. The names of the persons so designated shall constitute the list of Arbitrators. Each Party shall at all times maintain the name of at least one Arbitrator on the list.

2 Subject to paragraph 3 below, an Arbitrator designated by a Party shall remain on the list for a period of five years and shall be eligible for redesignation by that Party for additional five year periods.

3 An Arbitrator may by notice given to the Party which designated that person withdraw his name from the list. If an Arbitrator dies or gives notice of withdrawal of his name from the list or if a Party for any reason withdraws from the list the name of an Arbitrator designated by it, the Party which designated the Arbitrator in question shall notify the Executive Secretary promptly. An Arbitrator whose name is withdrawn from the list shall continue to serve on any Arbitral Tribunal to which that Arbitrator has been appointed until the completion of proceedings before that Arbitral Tribunal.

4 The Executive Secretary shall ensure that an up-to-date list is maintained of the Arbitrators designated pursuant to this Article.

Article 3

1 The Arbitral Tribunal shall be composed of three Arbitrators who shall be appointed as follows:

- (a) The party to the dispute commencing the proceedings shall appoint one Arbitrator, who may be its national, from the list referred to in Article 2 of this Annex. This appointment shall be included in the notification referred to in Article 4 of this Annex.
- (b) Within 40 days of the receipt of that notification, the other party to the dispute shall appoint the second Arbitrator, who may be its national, from the list referred to in Article 2 of this Annex.
- (c) Within 60 days of the appointment of the second Arbitrator, the parties to the dispute shall appoint by agreement the third Arbitrator from the list referred to in Article 2 of this Annex. The third Arbitrator shall not be either a national of, or a person designated by, a party to the dispute, or of the same nationality as either of the first two Arbitrators. The third Arbitrator shall be the Chairman of the Arbitral Tribunal.
- (d) If the second Arbitrator has not been appointed within the prescribed period, or if the parties to the dispute have not reached agreement within the prescribed period on the appointment of the third Arbitrator, the Arbitrator or Arbitrators shall be appointed, at the request of any party to the dispute and within 30 days of the receipt of such request, by the President of the International Court of Justice from the list referred to in Article 2 of this Annex and subject to the conditions prescribed in subparagraphs (b) and (c) above. In performing the functions accorded him in this subparagraph, the President of the Court shall consult the parties to the dispute and the Chairman of the Commission.
- (e) If the President of the International Court of Justice is unable to perform the functions accorded him in subparagraph (d) above or is a national of a party to the dispute, the functions shall be performed by the Vice-President of the Court, except that if the Vice-President is unable to perform the functions or is a national of a party to the dispute the functions shall be performed by the next most senior member of the Court who is available and is not a national of a party to the dispute.

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

3 In disputes involving more than two Parties, those Parties having the same interest shall appoint one Arbitrator by agreement within the period specified in paragraph 1(b) above.

Article 4

The party to the dispute commencing proceedings shall so notify the other party or parties to the dispute and the Executive Secretary in writing. Such notification shall include a statement of the claim and the grounds on which it is based. The notification shall be transmitted by the Executive Secretary to all Parties.

Article 5

1 Unless the parties to the dispute agree otherwise, arbitration shall take place at the headquarters of the Commission, where the records of the Arbitral Tribunal shall be kept. The Arbitral Tribunal shall adopt its own rules of procedure. Such rules shall ensure that each party to the dispute has a full opportunity to be heard and to present its case and shall also ensure that the proceedings are conducted expeditiously.

2 The Arbitral Tribunal may hear and decide counterclaims arising out of the dispute.

Article 6

1 The Arbitral Tribunal, where it considers that prima facie it has jurisdiction under this Convention, may:

- (a) at the request of any party to a dispute, indicate such provisional measures as it considers necessary to preserve the respective rights of the parties to the dispute;
- (b) prescribe any provisional measures which it considers appropriate under the circumstances to prevent serious harm to the Antarctic environment or dependent or associated ecosystems.

2 The parties to a dispute shall comply promptly with any provisional measures prescribed under paragraph 1(b) above pending an award under Article 9 of this Annex.

3 Notwithstanding Article 57(1), (2) and (3) of this Convention, a party to any dispute that may arise falling within the categories specified in Article 58(1)(a) to (g) of this Convention may at any time, by notification to the other party or parties to the dispute and to the Executive Secretary in accordance with Article 4 of this Annex, request that the Arbitral Tribunal be constituted as a matter of exceptional urgency to indicate or prescribe emergency provisional measures in accordance with this Article. In such case, the Arbitral Tribunal shall be constituted as soon as possible in accordance with Article

3 of this Annex, except that the time periods in Article 3(1)(b), (c) and (d) shall be reduced to 14 days in each case. The Arbitral Tribunal shall decide upon the request for emergency provisional measures within two months of the appointment of its Chairman.

4 Following a decision by the Arbitral Tribunal upon a request for emergency provisional measures in accordance with paragraph 3 above, settlement of the dispute shall proceed in accordance with Articles 56 and 57 of this Convention.

Article 7

Any Party which believes it has a legal interest, whether general or individual, which may be substantially affected by the award of an Arbitral Tribunal, may, unless the Arbitral Tribunal decides otherwise, intervene in the proceedings.

Article 8

The parties to the dispute shall facilitate the work of the Arbitral Tribunal and, in particular, in accordance with their law and using all means at their disposal, shall provide it with all relevant documents and information, and enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 9

If one of the parties to the dispute does not appear before the Arbitral Tribunal or fails to defend its case, any other party to the dispute may request the Arbitral Tribunal to continue the proceedings and make its award.

Article 10

1 The Arbitral Tribunal shall decide, on the basis of this Convention and other rules of law not incompatible with it, such disputes as are submitted to it.

2 The Arbitral Tribunal may decide, ex aequo et bono, a dispute submitted to it, if the parties to the dispute so agree.

Article 11

1 Before making its award, the Arbitral Tribunal shall satisfy itself that it has competence in respect of the dispute and that the claim or counterclaim is well founded in fact and law.

2 The award shall be accompanied by a statement of reasons for the decision and shall be communicated to the Executive Secretary who shall transmit it to all Parties.

3 The award shall be final and binding on the parties to the dispute and on any Party which intervened in the proceedings and shall be complied with without delay. The Arbitral Tribunal shall interpret the award at the request of a party to the dispute or of any intervening Party.

4 The award shall have no binding force except in respect of that particular case.

5 Unless the Arbitral Tribunal decides otherwise, the expenses of the Arbitral Tribunal, including the remuneration of the Arbitrators, shall be borne by the parties to the dispute in equal shares.

Article 12

All decisions of the Arbitral Tribunal, including those referred to in Articles 5, 6 and 11 of this Annex, shall be made by a majority of the Arbitrators who may not abstain from voting.

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DELEGATION LISTCHAIRMAN

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