Chapter 5
Role of International Seabed Authority

5.1. Introduction

The ISA is the institution through which parties to the 1982 Convention organize and control activities in an international seabed Area beyond the limits of national jurisdiction, particularly with a view to administer the resources of that Area. With the apparent failure of the Convention, the USA and seven like-minded industrialized nations\(^1\) sought an international regime that would lend stability to their seabed mining activities. Frustrated by the Convention provisions, \(^2\) which they believed unfairly and unnecessarily granted a disproportionate voice to developing countries that have little or no investment in seabed mining operations, these eight nations sought a seabed-mining regime more wholly in keeping with their economic interests. The establishment of an international regime for the exploitation of the deep seabed mineral resources is based on the principle that the Area and its resources are the CHM.\(^3\)

The functioning, membership and management of the Authority are affected by the Agreement on the Implementation of the Part XI of the Convention. The Authority functions through three main organs: the Assembly the supreme organ, which consists of all members of the Authority; the Council, the executive organ, with limited membership comprising 36 members; and Legal and Technical Commission, comprising 21 members, which assists the Council by making recommendations.

The ISA is a formal institution established by Agreement of the affiliated member that created in it. The Authority severe the diverse needs of member states all
of which benefit by the existence of an Authority that has been designed to work toward defined objectives. Under the 1982 Convention, the ISA consists of all national participants in the UNCLOS. It is based in Jamaica and founded by assessed contribution from UN members. The ISA is expected to organize and control all economic activities in the Area. The ISA administers the complex system.

Directing and guiding the Authority is an Assembly, supreme Authority’s body, made up of all members of the Authority states that have ratified or acceded to the Convention and a 36 member Council, the implementation part XI, approving work plans for mining and developing rules for equitable sharing of financial benefits derived from the seabed, and issuing emergency order to prevent serious harm to the marine environment.

Even the ISA that the Convention created is an independent international Authority, supported by the United States, and is necessary to provide stability of property rights to deep seabed minerals owned by no other nation. Without such an Authority providing exclusive property rights to seabed mine sites of the deep ocean floor, seabed mining, including that by U.S. interests, would never be realized. And remember that this body is limited to the mineral resources of the deep seabed beyond national jurisdiction that have yet to be mined, in contrast with the billions of dollars in fisheries, oil and gas production on the continental margins, all of which are under national jurisdiction.

The 1994 Agreement became possible when the end of the cold war largely eliminated the political elements in the controversy and greater realism dispelled the rosier dreams of the developing states. As modern nation states started to come apart at the seas, which are an indication that international society is fundamentally growing dysfunctional, one great man kept his perspective and that about how
humanity could survive. That man was Arvid Pardo who in an historic speech to the United Nations\textsuperscript{7} on 1\textsuperscript{st} November 1967 expressed his ideas on how to deal with this crisis in humanity. At the new millennium utilization of marine minerals is accelerating and knowledge of new types of marine mineral resources is expanding with significant present and potential scientific and economic benefits.

The ISA has gained near-universal support for its role in managing the exploitation of the mineral resources of the deep seabed,\textsuperscript{8} it has passed through the phases of negotiation and establishment and has begun to develop in its governance role. It has adopted a slow and cautious approach that has been facilitated by limited commercial interest to date in exploitation. The ISA is the end result of years of negotiation, confrontation, compromise and regime building. As of October 2006, there were 150 member states, and seven consortia with contracts for exploration or exploitation of deep seabed minerals. Few countries remain outside the Convention, and the most notable non-member, the United States, is the only industrialized country outside the regime.

Given the widespread acceptance of the regime and the historically multinational composition of ocean mining consortia, it appears certain that any exploitation of deep seabed mineral resources will be conducted under the regime since operating outside it raises significant and costly questions of recognition title to recovered minerals, potential for international legal actions to impede operations, and overt or covert retribution against other activities of developers by members of the Authority. The long and complex process leading to today's ISA consists of four phases: negotiation, establishment, governance and adjustment.

The effective functioning of the ISA is in the United States' interest. To this end, the United States has the opportunity to guide and influence the governance and
future adjustment of the seabed regime and to help develop both an international and a domestic environment that is supportive of private endeavors in international ocean space.

Following the First and Second UN Conferences on the Law of the Sea, many states became disturbed at the prospect of deep-sea mining\(^9\) being governed by the one-dimensional doctrine of freedom of high seas. In essence, it would mean that those states capable of exploiting the seabed would monopolize it reserves to the detriment of others. The political and economic context of deep seabed mining has rendered uncertain future, widely acceptable treaty regime for deep seabed mining, but also the existing legal regime applicable to that country. Major problems of scientific research and prevention of pollution are to be resolved intelligent, co-operative approach, which combines pragmatism, vision and high purpose.

It is clear that the seabed regime set out in Part XI of the Convention is causing more than passing difficulties. Some opposition to it appears ideological and therefore, subject to change\(^10\) over time, but some problem is concrete. It is also evident that unless special steps are taken, seabed-mining\(^11\) operations can actually widen the gap between the developed and the developing nations. The Third United Nations Conference on the Law of the Sea, when adopting the UN Convention on the Law of the Sea in Article 1982, established the Preparatory Commission for the ISA and for the International Tribunal for the Law of the Sea to ensure early effective operation of the Authority and the tribunal and to make the necessary arrangements for the start of their function.

Technological developments and pressure for re-allocation of resources were foremost among the factors that led to the convening of UNCLOS. There were calls for the establishment of a new international marine order, some coastal states were
bent on extending their jurisdiction over coastal waters; many developing countries feared that the industrialized states would unilaterally appropriate deep seabed resources. \(^{13}\) More importantly freedom of high seas is a principle that accommodates the market economies\(^ {14}\) of western industrialized countries. Whereas many developed countries argue that the principle merely satisfies the interest’s maritime powers, for industrialized states, not to regard deep seabed mining\(^ {15}\) of a high seas freedom mark the first breach in a tradition going back to Grotius.

The Group of 77 advocated the establishment of a completely new type of Authority oriented regime in which the Authority would have not only absolute control over all sea-bed related activities but would also directly participate in commercial production. As was mentioned before, there was hardly any disagreement on the need to establish an ISA. In the initial proposals made by states to the Sea Bed Committee, \(^ {16}\) different names were used: the Soviet Union called it an International Sea Bed Resources Agency; the UK used the term International Body; the US used the term International Seabed Resource Authority. However, states had divergent conceptions of the nature, scope of power and voting system of the ISA. Developing countries expected to create an absolutely new inter governmental organization with exclusive competence regarding deep-sea bed mining\(^ {17}\) and with full policy making powers and discretion to control all activities relating to deep-sea bed resources. The ISA has gained near-universal support for its role in managing the exploitation of the mineral resources of the deep seabed. It has passed through the phases of negotiation and establishment and has begun to develop in its governance role. It has adopted a slow and cautious approach that has been facilitated by limited commercial interest to date in exploitation. Conditions will change, however, and the Authority will have to adapt to these new conditions.
This adaptation will be guided by the member states. As an autonomous international organization, the Authority has the opportunity to develop new procedures, principles and norms of behavior within the legal structure specified by the Convention and the 1994 Agreement, either adapting processes from the United Nations and other organizations or creating new processes of its own. Beyond adaptation to changing economic and technological conditions, the Authority will face significant adjustments in its future as new leaders emerge, as changing economic conditions lead to the engagement of the Enterprise and the Economic Planning Commission and as new responsibilities are added from the outside.

**5.2 Establishment of International Seabed Authority**

There was felt need to establish ISA. The reason is that there was no separate Authority to control or regulate the exploration and exploitation of seabed Area. Moreover, over exploration was remained as it is without any absolute solution. Furthermore, there was huge cry of colonialism and economic imperialism between developed and developing states. As might be expected, the reaction to it varied predictably, it had immediate appeal to many developing countries. While the international society, almost for the first time in the history, came to agree on a large part of international law of the sea and the Third United Nations Conference, despite its cumbersome and time consuming rules of procedure. Settled most of the issues that looked in the beginning unsolvable, one issue that has yet to be finally resolved and which threatened to disintegrate of the entire Conference many a time, is the mining of deep seabed manganese nodules. Although this activity has not started so far and is likely to have less immediate effect on the basic interests of most states than other activities on which agreement has been reached, it has caught the imagination of
whole mankind because it contains an unimaginable amount of precious mineral resources.

The Preparatory Commission for the ISA and International Tribunal for the Law of the Sea during a four-week session in Geneva, which ended on 4 September 1985, continued to work rules of procedure both for the Assembly and Council of the Authority and for the international tribunals. This was included to prepare draft rules, regulations and procedure of the Authority and its subsidiary organs, mining code, operational options for the Enterprise, implementation of the pioneer regime etc., has by now accomplished major part of its work. For many years, following the adoption of the Law of the Sea Convention in 1982, the provisions of Part XI dealing with deep seabed mining were viewed as an obstacle to the universal acceptance of and adherence to the Convention.

In view of this 1994 Agreement for the Implementation of Part XI of the 1982 Convention has been adopted. The ISA is the organization through which states and parties to the Convention organize and control activities in the Area, particularly with a view to administering the resources of the Area, promoting and encouraging the conduct of MSR\(^\text{18}\) and disseminating the results of such research, with particular emphasis on research related to the environment impact of activities in the Area. The ISA established on 16 November 1994,\(^\text{19}\) it is an inter governmental body established to organize and control all mineral related activities in the international seabed Area beyond the limits of national jurisdiction, an Area underlying most of the world oceans.

In 1994 Agreement was opened for signature in July 1994, only four months before the Convention came into force. Signatories of the agreement were bound to interpret the Convention according to its contents, and all parties that acceded to the
Convention after one year would be deemed to be party to the Agreement as well. Overtime, the early parties to the Convention have also been ratifying or acceding to the 1994 Agreement, so that now, 122 of the 150 parties to UNCLOS are party to the implementation Agreement. Most of those parties to the Convention that have not yet ratified the Agreement are states for whom oceans have limited significance and who have not given ratification of the Agreement a high priority.

However, conventions and agreements can only define the structure of a regime; full understanding of a new regime evolves from internal decisions and processes that develop after it is established. It has been 10 years since the Authority convened for its first substantive session, thereby providing a body of work by which it can be evaluated.

The work of the Authority to date has gained little visibility beyond the delegations and organizations immediately involved in its work. The processes it has developed go far in demonstrating how the organization will carry out its responsibilities in the future. As the first multilateral organization with the responsibility to manage the exploitation of mineral resources in stateless space, the Authority's 10 years of experience provide a guide not only to the future of the deep seabed but also to the future of collaborative efforts to manage the development of other resources beyond the limits of national jurisdiction. Rather, the ISA is a small, narrowly mandated international agency that has emphatically no ability to control the water column and only functional Authority over the mining of the minerals of the deep seabed beyond national jurisdiction. Again, this is a necessary requirement for seabed mining, an Area beyond which any nation has sovereignty, to provide security of tenure to mine sites, without which mining will not occur.
The initial phase of a new regime must focus on organizational matters. In the case of the Authority, the focus was on creating a competent and cost-effective entity that could address the legal and economic responsibilities of managing seabed mineral resources. While attention was necessarily given to the physical matters of buildings, resources, staff and funds, the establishment phase also had to address the creation of a collaborative working relationship among the member states and between the members and the staff. Satya Nandan, the first secretary general of the Authority, said, “the most important task of the Authority since its inception has been to build the confidence of the international community in the institution and systems established for the governance of the deep seabed.”

During the first half of 2001 the Authority signed exploration contracts with seven entities, giving them exclusive rights to explore for nodules in specific areas under terms spelled out in the regulations. These contractors submitted their first set of annual reports to the Authority in 2002; none indicated any serious interest in commercial exploration. The Authority began work in August 2002 on another set of regulations, covering polymetallic sulphides and cobalt rich crusts rich sources of such minerals as copper, iron, zinc, silver and gold as well as cobalt. The sulphides are found around volcanic hot springs, especially in the Western Pacific Ocean, while
the crusts occur on oceanic ridges and elsewhere at several locations around the world.

The Authority has to decide which part or parts of the Area could be exploited. Any contract or joint venture entered into by the Authority should ensure that the Authority had direct and effective control at all times. The Authority might enter into contracts with other entities for various stages of the operations, which might include scientific research, general, surveys, exploration, evaluation, feasibility studies and the construction of facilities, exploitation, processing, transportation and marketing. Any other entities entering into a contract, joint venture or any other such form of association with the Authority. The Preparatory Commission, established by the Convention in 1983, had prepared draft rules of procedure, but these required considerable revision in light of the 1994 Agreement.

The revised rules were adopted in March 1995. Two modifications to the draft rules reflected the agreement’s principle of cost-effectiveness. Instead of a 36-member general committee, most of the duties anticipated for that group were assigned to the president and four vice presidents of the Assembly, acting altogether as the Bureau. The second was the elimination of summary records of the plenary meetings of the Assembly, a function that could have doubled the cost of meetings.

The basic functions of ISA is to manage the mineral resources of the international seabed Area, which are the common heritage, in such a way as to give effect to the principle contained in Part XI of the 1982 Convention on the Law of the Sea and the 1994 Agreement for the implementation of Part XI. In managing the mineral resources, ISA is required to ensure effective protection of the marine environment from harmful effects which may arise both from exploration of the international area and subsequently from exploration of the resources. In the
simplest view, a regime is a set of rules that specify powers, responsibilities, structures and processes to carry out tasks to achieve objectives. Such a definition, however, provides only a partial understanding of how a regime really functions.28

A more complete definition supplements the charter of a regime with rules created by the regime to guide its own activities, as well as the formal and informal principles29 and norms that guide the behavior of its members. To understand the regime for deep seabed minerals,30 one has to understand not just the terms of the Convention and Agreement, but the negotiation processes, shared and competing principles and the norms of behavior that led to the establishment of the regime and by which the regime currently operates.

A regulation on Prospecting and Exploration for Polymetallic Nodules in the Area was adopted in 2000,31 they contain strong provisions relating to the protection and preservation of the marine environment. Among the key principles embodied in the regulations are that (a) the Authority and sponsoring states are required to apply a precautionary approach, as reflected in principle 15 of the Rio Declaration32 to activities in the Area, and (b) there is a duty on each exploration contractor to take necessary measures to prevent, reduce and control pollution and other hazards to the marine environment arising from its activities in the area as far as reasonably possible. In nutshell it can be said that the Authority’s role is primarily concerned with prospecting, exploration and exploitation of mineral resources.33 It also has broader role among the protection and preservation of marine environment including its biodiversity and the promotion of scientific research in the international seabed Area as stated in Art 143 and 145 of the 1982 Convention on the Law of the Sea.34

The ISA has also begun to implement its responsibilities under the Convention with respect to MSR under Article 143. Any human activity in the international
seabed Area will have some form of effect on the marine environment. The aim of the Authority is not to prevent the use of the international seabed Area and its resources but to encourage activities whilst minimizing negative impacts. Main tasks of ISA are as follows:

1. Contracts for exploration
2. Prospecting and exploration for polymetallic sulphides and cobalt rich Ferro manganese crusts in the Area
3. Promotion and encouragement of MSR in the Area
4. Information and data relating to International Seabed Area
5. Resource assessment and geologic model for the Clarion – Clipper ton Fracture zone.

The Authority has established a Central Data Repository for data and information relating mainly to marine mineral deposits. The ISA has become the center of community and the repository of information related to the mineral resources of the deep seabed. The existence of rules, regulations and procedures for exploring polymetallic nodules, the impending rules for sulfides and cobalt crusts and the process for developing and approving contracts for development provide the procedural basis to ensure that deep seabed mineral development can begin with minimal delay after metal markets rise in the future, to the benefit of both miners and consumers.

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The Authority has plans to expand on this database by creating online databases of environmental and biological information. In addition to this, a freely available online bibliographic database is being created so that information on publications relevant to deep-sea mining. The associated biodiversity and other environmental conditions in the areas of interest are available to the public.

Protecting the marine environment requires management. To do this effectively there ought to be a better knowledge of this immense ecosystem. The UN General Assembly should consider adopting a declaration urging states, scientific institutions, the private sector and others to give high priority to research and exploration of the oceans. The Seabed Authority mandate is to regulate the exploitation of the mineral resources of the international seabed. Industrialized countries were worried that the ISA and its commercialism, the Enterprise would have been taken over by developing countries, putting major transnational consortia at a disadvantage in mining seabed minerals.\textsuperscript{37} There were a cost to the development of technology by industrialized countries.

The developing countries worried about the prospect that transnational based in industrialized countries controlling the technology for seabed mining would have taken control of mining ventures, shutting the poor world out of the benefits. Many of these suspicions have been overcome. Many of the polemical debate that characterized on seabed mining in the law of the sea\textsuperscript{38} have been left behind. There is willingness to identify issues in a pragmatic manner and to work in earnest to find acceptable and practical solutions. Unfortunately there is residual reluctance on the
part of a handful of governments, which have been slow in ratifying the Convention governing the work of the ISA.

The Authorities sole substantive accomplishments to date have been the adoption in 2000 of Regulations Governing Exploration for Polymetallic Nodules. These resources, which are called manganese nodules, contain varying amount of manganese, cobalt, copper and nickel. By the late 1960’s with advanced technology it appeared that harvesting of the nodules would soon become a commercial reality. At the same time, it was feared that the economic benefits from mining would accrue only to those developed states that possess the necessary capital and technology. The euphoric vision of the ISA elaborated in part XI of the Convention was based on economic assumptions and political ideologies that were current in the 1960’s and 1970’s but are now redundant. As a result of the 1994 Agreement, it is clear that the basic functions of the Authority are defined by a narrowly based spectral mandate. The Authority exists as the organization through which state parties to the Convention are to manage the mineral resources of the international seabed Area, which are CHM. The ultimate objective is that benefits derived from mining of the minerals from the seabed by way royalties, paid to the Authority will be distributed to mankind as a whole. It must be recalled, however, that the mandate of the Authority is based upon certain fundamental principles which, although often taken for granted, represent a relatively recent concept in the law of the sea and a radical departure from the doctrine of *mare liberum* which had governed relations between states for more than 300 years.

Perhaps the greatest challenge to the Authority in mining forward is have to cope with uncertainty. There is a massive amount of uncertainty associated with anything to do with deep ocean.
prospects for commercial scale seabed mining. At least with respect to polymetallic nodules, there appears to be no real prospect of commercial mining\textsuperscript{43} in the future. One of the characteristics of the law of the sea is that it has never stood still. For example the outer continental shelf\textsuperscript{44} under the Convention the Authority has no direct interest in the continental shelf.

Where the continental shelf extends beyond 200 nautical miles and beyond is found in the revenue sharing requirement under article 82 of the Convention.\textsuperscript{45} It should not be overlooked that article 76 and 82 together constituted the compromise reached at UNCLOS III between the broad shelf states\textsuperscript{46} and these states wishing to limits of the continental shelf to 200 nautical miles. Since the entry into force the Convention and the establishment of the Authority\textsuperscript{47} and the Commission for the Limits of Continental Shelf, attention has quite rightly focused on the implementation of article 76 and 82. On the other hand, it has largely been neglected.

From the point of view of the Authority the issue of most concern is how to manage the deep-sea environment\textsuperscript{48} and biodiversity from threat that may arise in the cause of mineral prospecting and exploration. The problem that arises with respect to these potential resources however is a broader one. There is in fact a plethora of international laws and regulations aimed in some way at protecting biodiversity both on the high seas and within national jurisdiction.

5.3 The Assembly

The Assembly of the Authority is a supreme organization with the power to establish general policies, \textsuperscript{49} constitutes of all ISA members.\textsuperscript{50} The Assembly is the body in which all members of the Authority are represented. In an organization composed of sovereign states, the Assembly provides legitimacy as the forum for all
parties and a source of general policy recommendations. It elects the Secretary-General, members of the Finance Committee and, when the Enterprise is established, both its director-general and the governing board. The Finance Committee has fifteen members elected by the Assembly. As long as the Authority is dependent upon member contributions it will include representatives from the five largest contributors. The Committee initiates or reviews all matters with financial implications for the Authority. The Finance Committee is specifically charged with the preparation of a recommended budget of the Authority a scale of assessments for its member states.

The Assembly has the following powers among others:

1. It elects the members of the Council and other bodies, as well as the Secretary General, who heads the Secretariat.

2. It sets the two-year budgets of the Authority as well as the rate by which members contribute towards the budgets, based on the assessment scale established by the United Nations for that body’s activities;

3. Following adoption by the Council, it approves the rules, regulations and procedures that the Authority may establish from time to time governing prospecting, exploration and exploitation in the Area. The Assembly took its first such action in 2000 by approving Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, as drawn up by the Council;

4. It examines reports from other bodies, notably the annual report by the Secretary General on the work of the Authority. This periodic examination gives members the opportunity to contact and make proposals on any aspect of the Authority work;
5 It considers and approves the rules, regulations and procedures of the
Authority and any amendments thereto, provisionally adopted by the
Council pursuant to Articles 162 paragraph 2;

6 It considers and approves upon the recommendation of the Council, the
rules, regulations and procedures on the equitable sharing of financial and
other economic benefits derived from activities in the Area;

7 It initiates studies and makes recommendations for the purpose of promoting
international co-operation concerning activities in the Area;

8 It examines periodic reports from the Council and from Enterprise and
special reports requested from the Council or any other agents of the
Authority;

As the supreme body of the Authority to which other bodies report, it is
possible for setting general policies and regulations reviewing the work of the
Authority. Although Article 160(1) \textsuperscript{51} of the Convention describes the Assembly as
the ‘supreme’ organ of the ISA with the power to establish general policies on any
matters within the competence of the Authority, the most important decisions are to
be made by the Council, which is the ‘executive’ organ of the Authority.

Therefore the composition and voting system of the Council have considerable
importance. The Assembly is first given very broad powers. In cases such as the rules,
regulations and procedures governing activities in the Area and the budget of the
Authority, the Assembly may adopt the recommendations of the Council or send the
recommendations back for further consideration, but cannot amend the
recommendations prior to adoption. In electing members of the Council, the
Assembly appoints the states parties recommended by each of the chambers.
Once the Assembly was organized, attention turned to the establishment of the Council. The criteria for election to the various chambers required further attention before parties were satisfied with their implementation. Competition for Council membership was intense, so the parties adopted a principle of rotation to ensure that parties skipped on the first Council would be elected to it at a later time. Arrangements were made to split terms among countries that had common interests, and a four-year rotation of one seat in the fifth group was arranged so that Africa, Asia and the Western Europe and Others Groups would sequentially give up one of their seats to the Latin and Caribbean Group. The First Council was elected in March 1996. In January 1998, the Assembly held elections for half of the membership to serve for four years beginning in January 1999. This staggered the membership so that half of the Council was elected at two-year intervals. The election of Council membership was followed by election of its president and vice presidents and review and adoption of its rules of procedure.

Art. 160 Para 1 gives the sole responsibility for establishing general policies on all issues with the jurisdiction of the Authority; Art. 160 Para 2(n) transfers to it competence for jurisdictional conflicts and assignment of matters; the other major organs of the Authority must account to the Assembly. For example, the Convention created the Assembly, defined its membership and directed the Assembly to regulate the participation of observers to its sessions. In its rules of procedure, the Assembly allows observers to not just observe, but also to participate in its deliberations. Inherent in the Authority’s objectives of sound decision making by consensus is the principle that decision-making is improved by the presentation of expert views and diverse perspectives.
The Convention created the Assembly, defined its membership and directed the Assembly to regulate the participation of observers to its sessions.

It has become common practice for the president and members of the Assembly to encourage observers, especially the United States, to participate in the discussions of the Assembly and the Council.  

Assembly is the supreme decision making organ of the Authority. The Assembly’s decisions are based on the cardinal principle of one nation one vote and lay out well-defined policies about the Authorities activities. According to Art. 159 paragraph 8, the decision on questions of substantive shall be taken by two third majority of the members present and voting, provided that such majority includes a majority of the members participating in the session. In a similar vein, there is possibility to participate by the development or industrialized countries in the session’s decision-making process.

This confrontation should be removed from the 1982 Convention. Even in the election procedure the developed and industrialized states have got lots of opportunities. So, they can easily vote against the developing and least developed states. Till today the system of voting and budgetary provision as indicated in the light of 1982 Convention is not comfortable with present scenario.

Moreover, there are differences of opinion between Assembly and Council where they are taking any initiations. These confrontations should be removed through the new legal regime. The Authority to establish general policies must be exercised in conformity with the relevant provisions of this Convention; the jurisdictional competence is limited to questions which are not expressly assigned to a particular organ, and assignments by the Assembly must be made in conformity with
the Convention’s general assignment\textsuperscript{56} of matters and competence among the organs of the Authority; the duty to account to the Assembly applies only in so far as specifically provided for in the Convention.

The presidents of the Assembly are as follows.

Presidents of the Assembly

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<thead>
<tr>
<th>Year</th>
<th>President</th>
<th>Country</th>
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<tr>
<td>2005</td>
<td>Mr. Olav Myklebust</td>
<td>(Norway)</td>
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<tr>
<td>2004</td>
<td>Mr. Dennis Francis</td>
<td>(Trinidad and Tobago)</td>
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<tr>
<td>2003</td>
<td>Mr. Jozef Franzen</td>
<td>(Slovakia)</td>
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<tr>
<td>2002</td>
<td>Mr. Martin Belinga-Eboutou</td>
<td>(Cameroon)</td>
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<td>2001</td>
<td>Mr. Peter Dickson Donigi</td>
<td>(Papua New Guinea)</td>
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<td>2000</td>
<td>Ms. Liesbeth Lijnzaad</td>
<td>(Netherlands)</td>
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<td>1999</td>
<td>Mr. José Luis Vallarta</td>
<td>(Mexico)</td>
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<td>1998</td>
<td>Mr. Tadeusz Bachleda-Curus</td>
<td>(Poland)</td>
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<td>1997</td>
<td>Mr. S. Amos Wako</td>
<td>(Kenya)</td>
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<tr>
<td>1996</td>
<td>Mr. Hasjim Djalal</td>
<td>(Indonesia)</td>
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The Convention assigns several other powers to the Authority, which will come into play once deep-sea mineral exploitation\textsuperscript{57} gets under way. These include decisions on the equitable sharing of financial and other economic benefits deriving from activities in the Area and on corporation or other economic adjustments to developing countries whose export earnings from their land based mineral extraction are diminished by seabed production. Establishment activities began with the formation of the Assembly, the election of its president and the review, modification and adoption of its rules of procedure.
5.4 Council

The ISA is currently examining issues concerning the future regulation of prospecting and exploration for polymetallic sulphides and cobalt rich crusts in the deep ocean beyond national jurisdiction. The 36 Member Council first discussed this matter in substance in August 2002 for the Authority and by the Legal and Technical Commission. The Legal and Technical Commission is composed of a minimum of 15 members nominated by the states and elected by the Council. This Commission reviews applications for contracts of exploration and exploitation, drafts rules and regulations for activities in the Area, recommends financial terms of contracts, assesses environmental implications of activities and makes recommendations for protection of the marine environment.

As all future applicants must also do, each of the seven contractors came to the Authority with the sponsorship of a state and provided information enabling the Council to determine that they are finally and technically capable of carrying out the activities they propose to undertake. These activities are set out in a plan of work concerning period of their contract, to be updated every five year.

The effect of seabed mineral production on the economies of developing countries for which mineral exports are a major source of income is addressed by the establishment of an economic assistance fund funded by a portion of the revenues from seabed mining. The economic planning commission is to prepare assistance plans, including coordination with regional development banks, for approval by the Council and adoption by the Assembly. The processes of the Law of the Sea Conference and of the informal consultations, particularly decision-making by consensus, carried over into the establishment of the seabed regime.
The 36 members of the Council are elected by the Assembly in five groups that represent (1) the largest consumers of metals derived from the seabed, including the largest consumer in 1994 (i.e. United States), (2) the largest investors in seabed mineral development, (3) the largest land-based producers, (4) developing countries, with special interests and (5) states distributed among the regional groups to ensure equitable geographic distribution. For voting purposes, each of the first three groups is a separate voting chamber and the developing states that are members of the fourth and fifth groups comprise the fourth voting chamber. It is important to note that all decisions on officers, membership in the Council and committees and adoption of rules were made by consensus or acclamation based on agreements developed through deliberation and compromise, reinforcing the principle of consensus decision-making.

Exploration and mining in the international seabed area can be carried out only under a contract issued by the Authority. The LOST revisions restrict some of the ISA's discretionary power, but still submerge seabed mining in the bizarre political dynamics of international organizations. Private firms must continue to survey and provide a site for the Enterprise for each area they wish to mine. The treaty encourages public cartels yet includes anti-monopoly and anti-density provisions that still would apply disproportionately to American mining firms. As the Council undertook its substantive work, it developed norms of behavior that extended its formal rules.

Concerns of some states that only the 36 members of the Council would be able to influence its work were put aside by the decision to allow all countries, both members and observers, to participate in the Council's deliberations. The right to vote was limited to the 36 members, but since the body was committed to consensus decision-making, other states and observers were able to have considerable influence
on the work of the Council. The United States delegation, as one of the most knowledgeable in attendance, has been specifically requested to participate in the deliberations by the leaders of the Council.

Through its Council, the Authority may issue contracts to companies or states that wish to carry out such activities and must ensure that their activities are carried out in accordance with the contract. An Economic Planning Commission and a Legal and Technical Commission to assess the environmental implications of seabed activities assist the Council. As has already been indicated in this chapter that the Council is the executive organ. It has duty to look after the pros and cons of the Authority. The decision making process within the Council proved to be one of the most difficult hard-core issues that the Convention has to grips with. The developed countries in general rule were of position that the Assembly should approve very broad policy lines; that the Council should have wide executive powers and considerable flexibility in its management of the business of the organization; and that the powers of the two bodies should be, to a large degree, separate.

The Council as well as other organs of the Authority, irrespective of their composition, should carry out day today activities within the rules and regulations laid down by the assembly. As the Council undertook its substantive work, it developed norms of behavior that extended its formal rules. Concerns of some states that only the 36 members of the Council would be able to influence its work were put aside by the decision to allow all countries, both members and observers, to participate in the Council’s deliberations. The right to vote was limited to the 36 members, but since the body was committed to consensus decision-making, other states and observers were able to have considerable influence on the work of the Council.
The United States delegation, as one of the most knowledgeable in attendance, has been specifically requested to participate in the deliberations by the leaders of the Council. Even some of the specific fixes look inadequate. Consider the voting system, which admittedly has been improved. According to the revised treaty, the United States would be guaranteed a seat in the Council, though still not a veto. On matters of serious interest, the United States could probably, but not necessarily, win the necessary extra two votes in its chamber to form a majority. Moreover, this purely negative veto power does not guarantee that the ISA would act when required to approve rules for mining applications.

It supervises and co-ordinates information of the elaborate regime established by the Convention to promote and regulate exploration for and exploitation of deep-sea minerals by states, corporations and other entities.
### Composition of the Council 2005 – 2008

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group A [Four Members]</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>China</td>
<td>China</td>
<td>China</td>
<td>China</td>
<td>China</td>
</tr>
<tr>
<td>Italy</td>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Japan</td>
<td>Japan</td>
<td>Japan</td>
<td>Japan</td>
<td>Japan</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>Russian Federation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Group B [Four Members]</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>France</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>Germany</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>India</td>
<td>India</td>
<td>India</td>
<td>India</td>
<td>India</td>
</tr>
<tr>
<td>Group C [Four Members]</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Canada</td>
<td>Canada</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indonesia</td>
<td>Indonesia</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td>Portugal</td>
<td>Portugal</td>
<td>Portugal</td>
<td>Portugal</td>
</tr>
<tr>
<td>South Africa</td>
<td>South Africa</td>
<td>South Africa</td>
<td>South Africa</td>
<td>South Africa</td>
</tr>
<tr>
<td>Group D (Six Members)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brazil</td>
<td>Brazil</td>
<td>Brazil</td>
<td>Brazil</td>
<td>Brazil</td>
</tr>
<tr>
<td>Egypt</td>
<td>Egypt</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

From the above tables it can be analyzed that the role of ISA is highly appreciable. The ISA has been giving more prominence to developing states in order to make harmony between developed and developing states.

Many of the presidents of the Assembly and Council have been elected on the basis of sovereign equality. Its specific functions\textsuperscript{66} are as follows:
1. It approves 15 years plans of work in the form of contracts, in which governmental and private activities spell out the activities they intended to conduct on precisely defined geographical areas assigned to them.

2. It exercises control over activities in the Area and supervises and co-ordinates implementation of the seabed provisions of the Convention.

3. It adopts and applies provisionally, pending approval by the Assembly, the rules, regulations and procedures by which the Authority controls prospecting, exploration and exploitation in the Area. Its initial set of regulations, adopted by consensus in 2000 and covering prospecting and exploration for polymetallic nodules is intended as the first part of a mining code that will eventually deal also with exploitation and with other deep sea mineral resources.

4. In cases where an environmental threat arises from seabed activities, it may issue emergency order to prevent harm, including orders to suspend or adjust operations.

5. It plays a role in various aspects of the regular functioning of the Authority, for example by proposing candidates for Secretary General, subsisting the Authority, budget for approval by the Assembly and making recommendations to the Assembly on any policy a matter.

Council is one of the two major organs of the ISA. It is the executive body of the ISA and is responsible primarily for the administration of the seabed-mining regime. As constructed by the Assembly, the following are members of the Council in their respective groups.
<table>
<thead>
<tr>
<th>Group A (Four)</th>
<th>Countries with special interest in deep seabed mining either as largest consumers or largest importers of minerals</th>
<th>US, Russia, Japan, UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group B (Four)</td>
<td>Countries with largest pioneer investment in deep seabed mining</td>
<td>France, China, India</td>
</tr>
<tr>
<td></td>
<td>Germany, India</td>
<td></td>
</tr>
<tr>
<td>Group C</td>
<td>Countries that one major exporter of minerals for demand from the deep seabed</td>
<td>Australia, China,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Indonesia, Zambia</td>
</tr>
<tr>
<td>Group D:</td>
<td>Developing states representing Tobago, Cameroon, Nigeria varies special interests</td>
<td>Omen, Bangladesh,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Brazil, Trinidad</td>
</tr>
<tr>
<td>Group E</td>
<td>Country referring the people of equitable Geographical distribution and balance between</td>
<td>Republic of Korea,</td>
</tr>
<tr>
<td></td>
<td>Distribution and balance between developed and Developing states</td>
<td>Philippines, Malaysia,</td>
</tr>
<tr>
<td></td>
<td>South Africa, Senegal, Tunisia, Kenya, Namibia, Argentina, Paraguay</td>
<td>Austria, Netherlands,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Italy, Egypt, Sudan,</td>
</tr>
</tbody>
</table>
It follows one of the most elaborate formulas fixed for the composition of any international body, designed to ensure equitable representation of a variety of economic and regional interest groups. This formula is as follows:

1. Four states that are major consumers of the categories of minerals found on the seabed, including the largest consumer;

2. Four states with the largest investments in seabed activities;

3. Four major land based producers capacity with seabed production;

4. Six developing countries with special interests including those with large populations, the land locked or geographically disadvantaged, major imports of the categories of minerals found on the seabed, potential producers of such minerals and least developed states. In 1998, the Russian Federation requested that the Council develop the mining code for exploration for polymetallic sulfides and cobalt crusts. Drawing from the code for nodules, a draft was sent to the Council for review where it had its first reading during the August 2005 session of the Authority. Design of the portion of the code applicable to exploitation will be undertaken when the prospects for exploitation improve and applications for contracts for exploitation are anticipated.

18 members elected to ensure an overall balance on geographical groups representing Africa, Asia, Eastern Europe, Latin America, The Caribbean and the group of Western European and other states. The voting system of the Council gave rise to tough negotiations. The Group of 77 favored a one-nation, one vote rule in the Council based on the principle of the sovereign equality of States. The majority requirement on questions of substance should be two-third. This would guarantee the Group of 77 an automatic majority. Obviously, this was unacceptable to
industrialized countries. The latter supported a weighted voting system, like that used in the World Bank and the International Monetary Fund, where voting is based on the investment contribution of the member states. This would guarantee them a dominating position. However, they realized that the Group of 77 would not accept this.

Therefore, they proposed that the voting system be organized in such a way that it would guarantee them a blocking minority vote or a veto in the Council. This was to ensure that important decisions could not be made without their affirmative vote. In addition, the consensus procedure is quite unwieldy. Decision-making processes will take a very long time. Decisions, which have once been passed, can be modified or rescinded only with great difficulty, which will lead to a high degree of rigidity in the regulatory structure. But exactly in the case of a new and largely untested technological undertaking like deep seabed mining, where many decisions must be made on the basis of uncertain data and prognoses, flexibility would be highly desirable.

Therefore, doubts remain as to the workability of this system of decision-making. There is a danger that the tediously arrived at agreement on the consensus principle will prove to be a allow achievement. In addition to its administrative and regulatory decision, the Authority has developed a knowledge gathering and management program that encourages and coordinates international researchers to enhance the scientific and technical understanding required for regulation of future mining activities in the Area. To date, the Authority has sponsored five workshops published two technical reports in addition to the proceedings of the workshops and has established an online database of minerals data related to nodules, crusts and hydrothermal sulfides.
To promote the broadest possible importance it has also adopted flexible procedures for participation, permitting non-members of the Council and even observers from states that do not belong to the Authority to take part in all discussions and drafts of texts. It is therefore, less important to ascertain the relative ranks of the Council and Assembly in the abstract than to determine which subject areas in the Convention are substantively thoroughly regulated, which powers are specifically provided for in the Convention, and on which points decisional competence, or at minimum a right to participate in decisions, is prescribed for the Council. Presidents of the Council are as follows.

Presidents of the Council

<table>
<thead>
<tr>
<th>Year</th>
<th>President</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>Park Hee-kwon</td>
<td>Republic of Korea</td>
</tr>
<tr>
<td>2004</td>
<td>Baïdy Diène</td>
<td>Senegal</td>
</tr>
<tr>
<td>2003</td>
<td>Domenico Da Empoli</td>
<td>Italy</td>
</tr>
<tr>
<td>2002</td>
<td>Fernando Pardo Huerta</td>
<td>Chile</td>
</tr>
<tr>
<td>2001</td>
<td>Tadeusz Bachleda-Curus</td>
<td>Poland</td>
</tr>
<tr>
<td>2000</td>
<td>Sakiusa A. Rabuka</td>
<td>Fiji</td>
</tr>
<tr>
<td>1999</td>
<td>Charles Manyang D’Awol</td>
<td>Sudan</td>
</tr>
<tr>
<td>1998</td>
<td>Joachim Koch</td>
<td>Germany</td>
</tr>
<tr>
<td>1997</td>
<td>Lennox Ballah</td>
<td>Trinidad and Tobago</td>
</tr>
</tbody>
</table>

The Assembly elected the Secretary General of the Authority in March 1996. This election avoided a formal vote by convening an informal meeting of the Assembly and holding a secret, “indicative” vote of the delegations. Indeed, production controls, one of the most controversial provisions in the original text, have
been preserved in the new Agreement. The revision does excise most of the LOST Article 151 and related provisions, which set a convoluted ceiling on seabed production. However, it leaves intact Article 150, which, among other things, states that the ISA is to ensure "the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral." That wording implies that the ISA has the right to impose production limits. The United States might have to rely on its ability to round up allied votes to block such a proposal in the council in perpetuity.

It is important to note that all decisions on officers, membership in the Council and committees and adoption of rules were made by consensus or acclamation based on agreements developed through deliberation and compromise, reinforcing the principle of consensus decision-making. Council decisions on most matters of substance require a two-thirds majority of the Council provided that a majority in any of the four chambers does not oppose the decision. Approval of plans of work recommended by the Legal and Technical Commission is approved unless the Council decides by consensus to reject it. The stricter standard of consensus is also required for approval of plans for distribution of financial benefits and amendments to the Convention. When it is established, the Economic Planning Commission will advise the Council on the design of assistance programs, which may be developed in cooperation with global and regional development institutions, for developing countries for whom exports of minerals are a major component of their economies and who suffer harm from seabed production.

With the establishment and operation of the Council, Finance Committee and Legal and Technical Commission, the governance of the regime got underway. The
principal areas of attention included the approval of applicants, the drafting and adoption areas of the Mining Code and the development of an information and knowledge management function to support the work of the Authority. It also included the continuing development of the procedures and administration of the Authority. The Council is the executive body of the Authority. It establishes specific policies and approves applications for exploration and exploitation rights. It has the power to oversee implementation of the seabed provisions of the Convention and Agreement and the rules and regulations of the Authority. It has 36 members who are elected by the Authority for rotating four year terms, according to a formula intended to ensure the representation of all geographical block as well as groups with special economic interests affected by seabed mining.

The Convention establishes a varied network of decision-making procedures in which the required voting majority increases in proportion to the importance of the decision. At the top of this system is the consensus requirement for especially important questions. Taking into consideration the eight seats, which would presumably be allocated to the Western industrialized countries, these countries would be able to prevent any decision contrary to their interests which is subject to the consensus requirement In particular, this would apply to the extremely important rules, regulations and procedures of the Authority.

5.5 Secretariat

The Secretariat is one of the main organs of the ISA. With a view to assisting the UN General Assembly in its annual consideration, review, and evaluation of developments pertaining to the implementation of the Convention, as well as other developments relating to ocean affairs and the law of the sea, the Secretary-General is
called upon to report on such developments annually to the Assembly. In its resolution 49/28, the Assembly further clarified the nature and scope of the functions of the Secretary-General, including his responsibility of providing information, advice, and assistance to States and international organizations in the better understanding of the Convention, its wider acceptance, uniform and consistent application, and effective implementation. The Convention also calls on the Secretary-General to perform various duties, among them that of depositary of the Convention and of charts or lists of geographical co-ordinates of baselines and outer limit lines of various maritime zones. The main functions of the Secretariat\textsuperscript{73} include:

- Preparing and submitting draft texts, reports and other documents, analysis, research findings, policy suggestions and recommendations, etc.;
- Providing secretariat services to the Assembly, the Council, the Legal and Technical Commission and the Finance Committee; providing information and advice to the bureau of those organs and bodies and to delegations; and assisting in planning the work of the sessions, in the conduct of the proceedings and in drafting reports;
- Providing meeting services (including interpretation, translation, document reproduction services and press releases);
- Producing publications, information bulletins and analytical studies;
- Organizing and servicing expert group meetings, seminars and workshops;
- Disseminating information on the activities and decisions of the Authority;
- Program planning and allocating resources for the effective, economic and efficient performance of the services and functions of the Secretariat.
5.6 Budget of the Authority

Article 173 of the Convention\textsuperscript{74} provides that the distributive budget of the Authority will be met by assured contractors made by state parties to the Convention until the time that other funds are adequate to meet the administrative expenses of the Authority. The initial work of the regime is financed by payments from members based on a scale of assessments recommended by the Council and approved by the Assembly. The ISA may use funds for three purposes: to cover its own expenses, to provide economic assistance to developing countries adversely affected by seabed mining and to distribute to states and peoples who are not yet self-governing. The plan for distribution of funds should have the consensus approval of the Council and be adopted by the Assembly.

Section 1(14) of the Annexure to the Agreement modifies these provisions by requiring that until the Agreement enters into force, the administrative expenses of the Authority will be met through the budget of the United Nations.

Budget of the Authority from 1999-2008 as follows;

<table>
<thead>
<tr>
<th>Year</th>
<th>US$ Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>-5,604,100</td>
</tr>
<tr>
<td>2000</td>
<td>-5,047,167</td>
</tr>
<tr>
<td>2001</td>
<td>-10,506,400</td>
</tr>
<tr>
<td>2002</td>
<td>-10,506,400</td>
</tr>
<tr>
<td>2003</td>
<td>- 10,509,700</td>
</tr>
<tr>
<td>2005</td>
<td>-10,816,700</td>
</tr>
<tr>
<td>2007-08</td>
<td>-11,782,400</td>
</tr>
</tbody>
</table>
5.7. Pioneer

At the new millennium utilization of marine minerals is accelerating and knowledge of new types of marine mineral resources is expanding with significant present and potential scientific and economic benefits. Through the establishment of Preparatory Commission the ISA and ITLOS has been established. The Commission was exposed to registered qualified applicants as pioneer investors. Pioneer activities are defined in Resolution II, paragraph 1 (b) or understanding contracts of financial and other assets, investigations, findings, research, engineering developments and other activities relevant to the identification, discovery and systematic analysis and evaluation of polymetallic nodules and to the determination of the technical and economic feasibility of exploration. These pioneer activities, they would be entitled to conduct exploration and exploitation of the resources of the areas. According to Resolution II, Preparatory Commission that the pioneer investors are certain entities that have invested at least 30 percent million in pioneer entities before a certain date they are grouped as follows:

a) France, India, Japan and the USSR or a state enterprise of one of them or a natural or judicial person possessing the nationality of or effectively controlled by one of those states, or by their nationals, provided that the state concerned signed the Convention and the entity concerned expanded the above mentioned sum before January 1983.

b) Four entities, whose components are natural or juridical persons possessing the nationality of one or more of the following states, or effectively controlled by one or more of them or their nationals, provided that the entity concerned the same amount before the same date, and that the state certifying the level of expenditure
for the entity signed the Convention: Belgium, Canada the Federal Republic of Germany, Italy, Japan, the Netherlands, the United Kingdom, and the United States.

c) Any developing state which signs the Convention or any state Enterprise or natural or judicial person possessing the nationality of such state or effectively controlled by its or its nationals, or any group of the foregoing, which has expanded the same amount of expenditure before January 1985.

Since the resolution of conflict was to take place prior to application to the Preparatory Commission for registration and the parties concerned were presumed to seek resolution outside the context of the commission, the provision in Resolution II did not indicate how prospective certifying states could exchange the co-ordinates of the areas claimed by applicants, ascertain the existence of overlaps, or begin negotiations in case any overlaps were identified. Also unresolved was how to secure confidentiality of information during and after the negotiations. Meanwhile, certain new developments were taking place outside the Commission, in the activities of the international consortia, which had earlier applied to the governments of the United States, the United Kingdom and the federal Republic of Germany for exploration licenses under their national laws. To arrive at this global solution, however, the commission had to take once again a practical approach, including a flexible interpretation and even modifications of certain provisions, towards Resolution II and its own earlier decisions.

There was a distinction between socialist and capitalist countries to explore and exploit the resources of the minerals. The complicated system of payments by contractors to the Authority contained in the 1982 Convention was eliminated and replaced with a direction that a new system would be developed that would be
comparable to royalty and revenue sharing requirements placed upon land-based producers of similar minerals. Concerns over the eventual size and cost of the Authority were addressed by the creation of a Finance Committee that included the states that contribute most to the operation of the Authority before it becomes self-supporting, a principle of cost-effectiveness to guide the operation of the Authority, and direction that the Authority was to undertake some of its functions and responsibilities only until the member states determined they are necessary.

The revised LOST establishes a new "economic assistance fund" to aid land based minerals producers. Surplus funds would still be distributed, "taking into particular consideration the interests and needs of the developing States and peoples who have not attained full independence or other self-governing status," like the Palestinian Authority, a provision unchanged by the 1994 Agreement.

Theoretically, the United States could block inappropriate payments at least so long as it was a member of the Finance Committee but over time U.S. ISA representatives would feel enormous pressure from their peers to be flexible and reasonable. The initial code reduced uncertainty for exploration contracts applicants and established a model for the later development of code to deal with exploitation of minerals other than nodules. The code is intended to set the conditions for activities in the Area and to guide applicants through the application process while providing objective standards for the evaluation of the applications by the Legal and Technical Commission.

It would be truly unforgettable for the international community that has so painstakingly negotiated for Convention if such an eventual was realized and the Convention did not enter into force. On the other hand, it is well known that the non-signatories have serious difficulties with some provisions of the Convention Part XI.
These contracts are bound to prevent, reduce and control pollution and other hazards to the marine environment, arising from their activities.

The plans of work were approved in 1997 in accordance with Resolution 2 of the Convention, but contracts could not be issued until the portions of the Mining Code relation to exploration for nodules were adopted. This section of the code was drafted by the Legal and Technical Commission, reviewed and revised by the Council and adopted by the assembly in July 2000. Based on the code, contracts for exploration were issued to the seven-pioneer investors in 2001 and 2002. The governance phase began with the consideration of the applications of the pioneer investors for contacts for prospecting and exploration.

The Secretariat continued the commitment to seeking outside expertise to inform the work of the Authority, and the Legal and Technical Commission devised rules to establish objective standards for the evaluation of applications for contracts. The Council reviewed, questioned and eventually approved the recommendations of the Legal and Technical Commission.

The approval of contracts for the seven pioneer investors in 2001 and 2002 and the approval of the plan of work by new application in 2005 demonstrated that the Authority was well into the governance phase. It is now applying the process it used for the development of the first component of the Mining Code to exploration for minerals other than nodules. It can be expected that the process, enhanced through experience, will be applied to the exploitation provisions of the code when they are needed. While the Authority has issued seven contracts for exploration for polymetallic nodules, it has not had experience with exploitation, nor has it gained experience in overseeing the exploration or exploitation of other minerals, notably cobalt crusts and polymetallic sulfides.
The Authority will also gain experience as it begins to manage the second half of the parallel system. At some point, the Enterprise will be needed to manage the exploitation of the reserved sites under the contracts of exploration by private firms and state operations. Extension into the commercial aspects of joint venture negotiations will open a new role for the Authority and it can be expected that the regime will need to adapt and adjust to this new role.

Seven contractors are any group of pioneer investors on a licensed approved by the United Nation Convention on the Law of the Sea was adopted. All exploration and-exploitation activities must be conducted under a contract approved by the Council on the recommendation of the Legal and Technical Commission. Plans of work leading to the contract must be approved if the application meets requirements specified in the rules, regulations and procedures applicable to Area activities.

Even though the economic potential of seabed minerals attracted the interest of mineral and ocean technology firms, the huge investment required for commercial development could not be raised unless investors could secure both exclusive access to a deposit and international recognition of their titles to the minerals they recovered. These issues became a topic of debate at the United Nations in 1970, when the UN General Assembly, with the support of the United States, adopted the Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction.

There are states had already made substantial investments in seabed exploration. They are Belgium, Canada, France, Germany, India, Italy, Japan, Netherlands, Russian Federation, United Kingdom and the United States. Recoveries of minerals have developed rapidly during recent decades, yielding significant economic returns and
providing potentially valuable additions to the world resources base. Under the freedom of the high seas, hesitancy by investors is particularly likely given the uncertain outcome of any International Court of Justice decision on the legality of the seabed mining outside the Convention. Notwithstanding the Conventions adoption of the CHM doctrine, the United States should sacrifice its rigid ideological requirements and accept the potential benefits of the Convention to avoid the chilling effect on investment of rejecting the Convention and supporting the freedom of the high seas doctrine. Registered investors are also obligated to explore a mine site reserved for the Enterprise and undertake other obligations, including the provision of training to individuals to be designated to explore a mine site reserved for the Preparatory Commission had registered seven pioneer investors.

With the Convention in force and ISA being functioning those pioneer investors will become contractors along the terms contained in the Convention and the Agreement, as well as regulations established by the ISA. Another cause for adjustment is experience. While the Authority has issued seven contracts for exploration for polymetallic nodules, it has not had experience with exploitation, nor has it gained experience in overseeing the exploration or exploitation of other minerals. As the Authority gains experience as a regulatory body, it is likely to learn how it needs to adjust its role. It can be anticipated that the receipt of revenues from exploitation activities and the need to implement a plan for their disbursement will bring new issues to the fore to which the Authority will adjust.

The Authority is authorized to take actions against anyone who violates these obligations, the overall structure of relations between the Authority and contractors follows the parallel system” specified in the Convention as modified by the 1994 Agreement. Aimed in part at ensuring that nobody will monopolize the seabed
through economic might. The Authority established Mining Code for ocean governance. The purpose of this mining code, known normally as draft regulations on prospecting and exploration for polymetallic nodules in the international seabed area, is set out the conditions under which states and other entities will contract with the Authority to carry out activities in the Area.

The framework for this new international regime is set out in the Law of the Sea Convention, according to which the Authority is to regulate activities through a system of contracts, reporting and inspections. The Convention stresses in particular the need to protect the marine environment against any harmful effects of dredging and other work involved in mineral exploration. The aim of the code, in elaborating the Convention, provisions, is to set our specific rights; duties and understanding that will legally bind the Authority and contractors. The regulations spell out financial and technological requirements that contractors must meet for the Authority to offer guarantee of security of tenure and ensure.

The Seabed regime became operational in 2001 when the Authority signed contracts with the first group of organizations and governments that had applied for authorization to explore the international seabed area for polymetallic nodules. These were among the pioneer investors. The following Seven entities now have 15-year contracts with the Authority.

1. China Ocean Mineral Resources: Research and Development Association (COMRA)
2. Deep Ocean Resources Development Company (DORC) of Japan
3. Government of India
4. Government of the Republic of Korea
5. Institute of Francis de recherché pour l’exploitation de la mer / Association franchise pour l’étude et la recherche des nodules IFFMER / AFF RNOD of France

6. Interoceanmetal Joint Organization (IOM) a consortium formed by Bulgaria, Cuba, Czech Republic, Poland, Russia Federation and Slovakia.

7. Yuzhmorgeologiya, a State Enterprise of the Russian Federation

When they contracted with the Authority in 2001 and 2002, these entities from developed and developing countries became the first participants in the newly established scheme to develop mineral resources in the deep seabed Area under intentional administration. The scheme was established under the 1982 United Nations Convention on the Law of the Sea and the 1994 Agreement Relating to the Implementation of part XI of the Convention. These contractors are subject to the provisions underlined under the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area. These reports are monitored by the Authority through its Legal and Technical Commission, which evaluated the first set of reports in 2002 and reported its conclusions to the Council of the Authority.

The evaluations covered exploration work, environmental study, the development of mining technology and legal and financial issues. Under the regulations, each contract has the exclusive right to explore an initial area of up to 150,000 square kilometers. Over the first eight years of the contract, half of this area is to be relinquished. Six of the exploration areas are in the Central Pacific Ocean South and Southeast of Hawaii, and one is in the middle of the Indian Ocean.
5.8 The Enterprise

The Authority operates by contracting with private and public corporations and other entities authorizing them to explore and eventually exploit, specified areas on the deep seabed for mineral resources. The Enterprise is the entity that will conduct exploration and exploitation of seabed minerals through joint ventures and other arrangements and it will share its benefits with the world as a whole and with developing states in particular. The Convention also established a body called the Enterprise\textsuperscript{93} which is to serve as the Authority’s own mining operation, but no concrete steps have been taken to bring this into being. Article 170 says that the Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly, pursuant to article 153, paragraph 2(a), as well as the transporting, processing and marketing of minerals recovered from the Area. The Parallel System and the Enterprise: Applicants for a contract of exploration identify two areas and submit sufficient information to allow the legal and technical commission to recommend one of the two sites to be reserved for the Enterprise, developing state operations or, if not used within 15 years, for commercial activities.

The Enterprise is to be the operating arm of the Authority operating on behalf of the world as a whole. The first operation of the Enterprise is to be conducted as a joint venture. The Enterprise may conduct its operations in one of the reserved sites submitted by private contractors, giving it value that may be contributed to a joint venture. The operations of the Enterprise are to be subject to the same requirements as private contractors, including payments to the Authority, contracts for exploration and exploitation, and regulations governing activities of contractors in the Area. Until the Council decides to establish the Enterprise, its functions, primarily monitoring and planning, will be conducted by the Secretariat.
The principles as articulated under article 153\textsuperscript{94} have some sort of defects because of the globalization and new market systems. From the prospective of the trend analysis the principles with reference to exploration and exploitation of seabed\textsuperscript{95} have some defects. There is a possibility of overlapping system between private and public corporations. Due to the liberalization under WTO regime and New International Economic Order the problems between the private and public corporations are remained. There is no absolute solution as indicated in the light of Article 153 and 170 of the 1982 Convention. Since there is gap between haves and have-nots, practically it may not possible.

The solution can be found in negotiation between states, \textsuperscript{96} eventually, the seabed regime may also be called on to make adjustments thrust upon it by states acting outside the Authority. If the Authority gains the trust of its members as an effective manager and steward of deep ocean minerals, it is possible that states may negotiate to add other deep ocean issues to the responsibilities assigned to the Authority by UNCLOS and the 1994 Agreement.

The subject of the management, protection and exploitation of the biodiversity of life on the deep ocean floor has gained some attention. While there is only limited knowledge of the scope or the fragility of the marine life of the seabed, there have been discussions of the potential commercial value of this resource. The Authority, charged with protecting the marine environment, \textsuperscript{97} must consider effects on marine life of mineral exploration and exploitation.

It is conceivable that a new Agreement could extend the role of the Authority to the management, exploitation and protection of deep seabed biodiversity. Concerns that private firms would be at a competitive disadvantage to the Enterprise were addressed by favoring joint ventures for the Enterprise, eliminating burdens on states
and firms for financing the first Enterprise operation and requiring that the enterprise be subject to the same application and contracting procedures as private applicants. The complicated system of payments by contractors to the Authority contained in the 1982 Convention was eliminated and replaced with a direction that a new system would be developed that would be comparable to royalty and revenue sharing requirements placed upon land-based producers of similar minerals.

Concerns over the eventual size and cost of the Authority were addressed by the creation of a Finance Committee that included the states that contribute most to the operation of the Authority before it becomes self-supporting, a principle of cost-effectiveness to guide the operation of the Authority, and direction that the Authority was to undertake some of its functions and responsibilities only until the member states determined they are necessary.

In addition, there will be some immediate changes required in the regulations in areas such as the parallel scheme of mineral sharing for exploration contracts because, unlike nodule mining areas that can be equally decided between the contractor and the Enterprise, crusts and sulphides in more concentrated areas are distributed and have varying metal contents. Public or private Enterprises may mine after receiving a contract from the Authority and the Authority will mine through its own organ called Enterprise. The Enterprise may also mine co-operatively with a contractor, the parallel approach was originally proposed by the United States as a compromise with the Group 77.

The United States later rejected the Convention because its interest in the development of mineral resources had not been satisfied by the parallel system as finally adopted. A license to mine the seabed may be procured by a state or private Enterprise by identifying two equally attractive mine sites and submitting a proposal.
for mining one. The Authority would reserve one site for itself and grant a contract for mining the other site to the applicant, provided its proposal complied with regulations and overall production limits as well as an obligation to make its mining technology available to the Enterprise. On fair and reasonable commercial terms and conditions of the Enterprise is otherwise unable to procure comparable technology on the open market.

The Authority will also gain experience as it begins to manage the second half of the parallels system. At some point, the Enterprise will be needed to manage the exploitation of the reserved sites under the contracts of exploration by private firms and state operations. Extension into the commercial aspects of joint venture negotiations will open a new role for the Authority and it can be expected that the regime will need to adapt and adjust to this new role.

The United States explained its vote against the Convention by declaring that the seabed mining provisions would deter the development of deep seabed mineral resources and that the United States did not believe that the access necessary in the future to promote the economic development of those resources had been assured. Benefit sharing is perhaps the most controversial aspect of the implementation of the common heritage principle into the deep seabed portion of Law of the Sea Convention.

The Authority governs the process required to mine the deep seabed. First, the entity that would like to mine the deep seabed must submit applications proposing two feasible work sites. The Enterprise then awards the entity one site and reserves the other, already researched site, for a qualified developing nation applicant for itself. Therefore, the original applicant is sharing its preliminary research with a less capable developing nation and Enterprise. Next, the original applicant must share any
specialized technology used in its prospect at reasonable rates with the Enterprise and qualified developing nations. After the ten years, time period, the Enterprise and the qualified developing nations would presumably have enough technology to mine the common heritage region on their own. In addition, the Convention needs expensive application fees and a large annual fixed fee, among other financial requirements. The Authority is to consider the particular needs of developing countries, both coastal and land locked, when making financial disbursements.

According to Section 2 of 1994 Agreement the Secretary of the Authority shall perform the function of the Authority until it begins to operate independently of the secretariat. 102 The Secretary General of the Authority shall appoint from within the staff of the Authority an interim Director General to oversee the performance of these functions by Secretariat. These functions shall be:

a) Monitoring and reviewing the trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects.

b) Assessment of the results of the conduct of MSR with respect to activities in the Area, with particular emphasis on research related to the environmental impact of activities in the Area;

c) Assessment of available data relating to prospecting and exploration including the criteria for such activity.

d) Assessment of technological development relevant to activities in the Area, in particular technology relating to protection and preservation of the marine environment;

e) Evaluation of information and data relating to areas reserved for the Authority;
f) Assessment of approaches to joint venture operations;

g) Collection of information on the availability of manpower,

h) Study of managerial policy options for the administration of the Enterprise at
different stages of operations.

Section 2(2) of the Agreement focused that the Enterprise should conduct its
initial deep seabed mining operations through joint ventures. Upon the approval of a
plan of work for exploration for an entity other than the Enterprise or upon receipt by
the Council of an application for a joint venture operation with Enterprise, the Council
should take up the issue of the functioning of the Enterprise independently of the
Secretariat of the Authority.

All contracts for exploitation, including those of the Enterprise, will include
provisions to share revenue with the Authority in the form of royalties or profit
sharing. The rates for revenue sharing are to be comparable for mining activities on
land. The funds from revenue sharing are first applied to the operating expenses of the
Authority, then to economic assistance for developing countries affected by seabed
production and then to the general membership according to plans developed by the
Finance Committee and approved by both the Council and the Authority.

If joint venture operates with the Enterprises in accordance with sound
Council principles, the Council should issue a directive pursuant to article 170,
paragraph 2 of the Convention providing for such independent functioning,¹⁰³ this is
one of the major functions of Council to see the deep seabed mining operation
through joint venture. There are ambiguities in the section 2(5) of the Agreement that
the contractor that has contributed a particular Area to the Authority as reserved areas
has the right of first refusal to enter into a joint venture arrangement with the

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Enterprise for exploration and exploitation of that Area. One source of change in regimes is the change of the people who establish them and contribute to their governance.

These are the people who carry the culture of the organization—the norms of behavior, its history and the interpretation of precedents. As these people leave the organization, new parties interpret the regime from their own experience and expectations. The Authority has had continuity in its leadership from the time of the law of the sea negotiations in the 1970s. While many former participants have moved on to other issues, retired or passed away, some experienced individuals who share a vision borne of common effort to create a workable regime continue to participate in the work of the Authority. It is to be expected that the regime will adjust to fit the people who lead it in the future. Failure to participate in the regime as it changes would eliminate important opportunities to shape its future.

5.9 Seabed Dispute Chamber and International Tribunal for Law of the Sea

The Convention sets out an international law dealing with all aspects of the uses of the oceans. The entry into force, on 16 November 1994, of the UNCLOS, which was opened for signature at Mantego Bay, Jamaica, on 10 December 1982, is an important event in the history of the codification of international Law.

The entry into force of the Convention and the adoption, by the General Assembly of the United Nations on 28 July 1994, of the Agreement Relating to the Implementation part XI of the UNCLOS, that facilitated the ratification of the Convention by a larger number of industrialized states, made it possible to set up the Tribunal. The ITLOS is an independent judicial body established by the
Convention to adjudicate disputes arising out of the interpretation and application of the Convention. The Tribunal is composed of 21 independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea.

The ISA would be the first and final judge of deep-sea disputes. It would get into the mining business itself with forced subsidies from private companies. With its cut of profits, royalties and fees, the ISA would also be a redistribute-the-wealth mechanism for deserving developing countries. As for the UNCLOS mechanisms, states that are parties to the Convention have an obligation under Article 279 to settle their maritime disputes through peaceful means. If a settlement cannot be reached through negotiation, parties to UNCLOS should submit their dispute to one of several procedures for binding arbitration, as per Part XV of UNCLOS, including: the ICJ, ITLOS or an arbitral tribunal to be created under Annex VII of UNCLOS. One advantage of the 1982 Convention was that it upheld the compromises embodied in the non-seabed portions of the Convention while the testing and adjustment period went forward. When consultations and negotiations recommenced, they were not hampered by concerns of linkages to other issues. The concept of "post settlement" allowed negotiation over differences to proceed without threat to previously resolved issues.

The settlement of dispute is central feature of the Convention that is not characteristic of many other multilateral treaties with significant content, namely that arbitration of disputes is created as an integral part of the regime. The International Tribunals in the past recognized only sovereign nations as litigants. This was because international society was comprised of nations states, and only sovereign nations were recognized as parties with full rights and duties under international law it
was inconceivable that anything but a state could be a party in an International Tribunal\textsuperscript{106} with the ITLOS, however, a Special Chamber was set up to allow an agent other than a sovereign nations to bring suit. That Chamber, the SDC, accepts actions even from private citizens or companies engaged in seabed development.

The SDC is established as an expert body of the ITLOS, which has vital role to settle disputes concerning activities in the deep seabed mining,\textsuperscript{107} the judges who serve in the Chamber are selected among those of the Tribunal. According to Annex VI, section 4, a Seabed Disputes Chambers shall be established.\textsuperscript{108} It is consists of 11 members selected by a majority of the member of the Tribunal from among them for a term of three years and could be renewable for he second term. The member of the Chambers shall represent the principal legal system of the world and assure the equitable geographical distribution. One president shall be selected from the member of the Chambers to serve the term of the Chambers. If any proceedings is still pending during the term of three years, the Chambers shall complete the proceedings in its original composition. If there is a vacancy, the Tribunals shall select one among its members to hold office for the remainder of predecessor’s term. Although no disputes regarding the deep seabed have reached the ITLOS or the ICJ, several fisheries cases have been decided and may be helpful in determining ownership issues. At the very least, the fisheries cases serve to clarify the probable ITLOS direction in future deep seabed mining disputes. The ITLOS is supposed to offer dispassionate adjudication of disputes. Yet membership is decided by quota; each "geographical group" is to have at least three representatives.

Article 14 states that the SDC shall be established in accordance with the provisions\textsuperscript{109} of section 4 of this Annex. Its jurisdiction, powers and functions shall be as provided for in Part XI, section 5.
The composition of SDC as follows: 110

1. The SDC referred to in article 14 of this Annex shall be composed of 11 members, selected by a majority of the elected members of the Tribunal from among them.

2. In the selection of the members of the Chamber, the representation of the principal legal systems of the world and equitable geographical distribution shall be assured. The Assembly of the Authority may adopt recommendations of a general nature relating to such representation and distribution.

3. The members of the Chamber shall be selected every three years and may be selected for a second term.

4. The Chamber shall elect its President from among its members, who shall serve for the term for which the Chamber has been selected.

5. If any proceedings are still pending at the end of any three-year period for which the Chamber has been selected, the Chamber shall complete the proceedings in its original composition.

6. If a vacancy occurs in the Chamber, the Tribunal shall select a successor from among its elected members, who shall hold office for the remainder of his predecessor's term.

7. A quorum of seven of the members selected by the Tribunal shall be required to constitute the Chamber.

Article 36 of the Annex states about an ad hoc Chamber 111 can be done in order to make distribution of justice. The composition of ad hoc Chamber as follows: 
1. The SDC shall form an *ad hoc* chamber, composed of three of its members, for dealing with a particular dispute submitted to it in accordance with article 188, paragraph 1(b). The SDC with the approval of the parties shall determine the composition of such a chamber.

2. If the parties do not agree on the composition of an *ad hoc* Chamber, each party to the dispute shall appoint one member, and they shall appoint the third member in agreement. If they disagree, or if any party fails to make an appointment, the President of the SDC shall promptly make the appointment or appointments from among its members, after consultation with the parties.

3. Members of the *ad hoc* Chamber must not be in the service of, or nationals of, any of the parties to the dispute.

To equitably resolve disputes and balance the various rights involved, the Hague Convention on Pacific Settlement of Disputes of 1907 recognized the need for "an impartial and conscientious investigation to aid in fact finding prior to resolution. When diplomatic negotiations fail, a state that is not involved in the dispute, or a prominent international official, may offer good offices as an intermediary to assist in settlement of the dispute. If the role of the intermediary grows to an active position in the settlement, the process becomes mediation. When the mediator is an independent body rather than a noninvolved state or prominent official, the process is termed conciliation. The recommendations following conciliation are non-binding, in contrast to those of binding arbitration where the settlement of an issue is undertaken by a judge.
Whether it is a question of treaty interpretation, or a threat to international order, or simply resource exploitation by one state perceived as excessive by another, there has been no shortage of disputes pertaining to the use of the seas and especially to fishery jurisdiction. In fact, it was the abundance of such disputes that led to the attempts to formulate an international regime for the sea, however imperfect. Part of the imperfection stems from the fact that states can neither be made nor can be persuaded to accede to a treaty nor to submit to the judgment of an international tribunal, unless they have previously accepted the tribunal's jurisdiction or adopted a compromise to submit disputes to the tribunal.

**The Swordfish Cases**

A dispute rooted in the issue of court jurisdiction arose in the late 1990s when European Union (EU) fishing fleets began to hunt swordfish over the Nazca Ridge in the Southeast Pacific. Swordfish (*Xiphias gladius*) are a migratory species found in the tropical and temperate seas of the world, from approximately 45 degrees north to 45 degrees south. Because of their far ranging travels, the fish cross the jurisdictional boundaries of several countries, and this allows for the argument that they are a common resource open to all and thus must be protected for future generations. Chile, to protect the swordfish in its EEZ and adjacent high seas, has enacted several regulations for conservation that specify what gear is to be used and that halt the issuance of new permits. In addition to limiting the size of the fish that can be caught to 106 cm, Chilean Fisheries Law, article 162 states that Chilean ports are not open to factory ships and EU long liners that disregard the catch regulations.

To settle the dispute that arose, the EU chose to take its case to the WTO in the belief that the WTO was a better forum because (1) the dispute was about
jurisdictional rather than environmental issues, i.e., Chile's interpretation of an EEZ; (2) the WTO could enforce a positive judgment for the EU by imposing retaliatory measures; and (3) the WTO has tighter time limits for dispute resolution. The European Union contended that the Chilean regulations violated article V of the GATT, which allows free transit of goods along contracting parties' territories. In addition, the EU argued that because its ships were prevented from landing in Chilean ports, they were unable to process and ship the fish to markets in the United States and other NAFTA states, thus violating article XI of GATT, which prohibits quantitative restrictions on imports or exports. Chile, in response to the EU's actions, brought the case to ITLOS and sought to use that organization's dispute settlement mechanism. Chile stated that the issue before ITLOS was whether the EU had complied with UNCLOS article 64 (regarding cooperation with coastal states in managing conservation of migratory and straddling stocks in EEZ waters), articles 116-119, article 297 (pertaining to dispute settlement), and article 300 (pertaining to good faith and not abusing rights). In addition, Chile asked the tribunal to find that the EU had not enacted proper methods for conservation because it allowed the use of long lines on its boats and it failed to report its catches to the Food and Agriculture Organization.

The Chamber for Marine Environment Disputes is available to deal with disputes concerning the interpretation or application of:

(1) Any provision of the Convention concerning the protection and preservation of the marine environment;
(2) Any provision of special conservations and agreements relating to the protection and preservation of the marine environment referred to in article 237 of the Convention, \(^{115}\) and

(3) Any provision of any agreement relating to the protection and preservation of the marine environment, which confers jurisdiction on the Tribunal.

In addition to the provisions of article 293, \(^{116}\) the Chamber shall apply:

(a) The rules, regulations and procedures of the Authority adopted in accordance with this Convention; and

(b) The terms of contracts concerning activities in the Area in matters relating to those contracts.

The Tribunal has exclusive jurisdiction, through its SDC, with respect to disputes relating to activities in the international seabed Area. These matters include disputes between States Parties concerning the interpretation or application of the provisions of the Convention, along with those of the \textit{Agreement relating to the Implementation of the Part XI of the Convention}, \(^{117}\) concerning the deep seabed Area; as well as other categories of disputes as mentioned in article 187, Section 5, Part XI.

In addition to the SDC, the Tribunal will form annually a chamber composed of five of its members, which may hear and determine disputes by summary procedure. The Tribunal will also form special chambers for dealing with a particular dispute submitted to it if the parties so request. The Tribunal with the approval of the parties will determine the composition of those chambers. Finally, the Tribunal may form such other chambers, composed of three or more its members, as it considers necessary for dealing with particular categories of disputes.
The ITLOS located in Hamburg, Germany, is one of the possible forums to which states can bring disputes arising out of the UNCLOS interpretation and implementation.

On 1 August 1996, its 21 judges were elected by the 5th meeting of states parties to the Convention held at the United Nations Headquarters in New York. The Convention establishes a dispute settlement system to promote compliance with its provisions and the peaceful settlement of disputes. These procedures are flexible, providing options both as to the appropriate means for resolution of disputes and as to subject matter. In terms of forum, a state is able to choose, by written declaration, one or more means for the settlement of disputes concerning the interpretation or application of the Convention.

The SDC plays an important role within this Tribunal due to the particular provisions governing its composition and functions, mainly framed in part XV, Section 5 of part XI and in section 4 of Annex VI to the statute of the ITLOS, and due to its wide competence and various innovations that characterize it with respect to other international jurisdiction. Disputes relating to activities in the International Seabed Area are submitted to the SDC of the Tribunal, consisting of 11 judges.

Any party to a dispute over which the Seabed Disputes Chamber has jurisdiction may request the SDC to form an *ad hoc* chamber composed of three members of the SDC. Under the Law of the Sea Convention legal disputes relating to seabed matters covered by part XI are to be handled by its SDC established by the ITLOS. Only the Council may institute proceedings before the Chamber on behalf of the Authority in cases of non-compliance. The SDC is competent to give advisory opinions on legal questions arising within the scope of the activities of the ISA. The
Tribunal may also give advisory opinions in certain cases under international agreements related to the purposes of the Convention.

**The Southern Blue-Fin Tuna Cases**

New Zealand and Australia sought adjudication against Japan for violating UNCLOS III articles 64 and 116-119 dealing with the conservation and management of fish stocks. The experimental fishing program and the total allowable catch number were the issues keeping the two sides from reaching an agreement. Japan maintained that since it engaged in an experimental fishing program to assess the viability of the stock, the dispute was scientific rather than legal. The factor that made this case difficult to resolve was that science could provide no answer as to what methods were necessary to preserve the southern blue-fin tuna, what catch rate would allow the stock to remain strong enough to survive and, most importantly, what was the sustainable yield of the tuna.

In view of the scientific debate, ITLOS recognized the uncertainty involved in the issue. The tribunal ordered the parties (1) to avoid aggravation of the dispute, (2) to reasonably carry out the decision, (3) to set the total allowable catch at levels last agreed upon by the disputants, (4) to refrain from an experimental fishing program unless the disputants mutually agree upon one, (5) to resume negotiations in order to reach agreement on conservation and management measures of southern blue-fin tuna, and (6) to make additional efforts to reach agreements with other states regarding conservation and management of southern blue-fin tuna. ITLOS also provided for interim measures until all points were in place. Though the disputants were now able to proceed to arbitration, the problem of scientific uncertainty was not addressed.
Thus, a co promissory clause is part of many treaties relating to the law of the sea, whereby parties agree to take any dispute arising from the interpretation of the treaties in question to an international tribunal.

Conventions adopted under the auspices of the IMO contain provisions to submit disputes to the ICJ or to an arbitral tribunal. In general, under UNCLOS III, articles 280 and 282, dispute settlement methods are to be decided by the parties involved, but provision is made for systems of dispute resolution. These are the ICJ, the ITLOS, an International Arbitral Tribunal, and a Special Technical Arbitral Tribunal. Arbitration is required when disputing parties have not accepted the same procedure. Guidance on selection of an arbitral tribunal is provided in Annex VII to the Convention.

The dispute settlement provisions are based on the promise that any party to the dispute may subject to binding arbitration or adjudication and in that context carve out important qualifications and exceptions.

There are three types of qualifications and exceptions to the basic principle set forth in Article 286 that any dispute concerning the interpretation or application of the Convention that is not settled by other means shall be submitted to arbitration or adjudication at the request of any party to the dispute.

Firstly, Articles 280 and 281 of the Convention preserve the right of the parties to agree to settle a dispute concerning the interpretation or application of the Convention by means of their own choice including means other than arbitration or adjudication.

Secondly, Article 297 of the Convention provides that a coastal state shall not be obliged to accept the submission to arbitration or adjudication of any dispute...
relating to its sovereign rights with respect to the living resources in the EEZ or their exercise, or any dispute out of its excessive of certain rights with respect to scientific Research in EEZ or on the Continental Shelf. Thirdly, Article 298 of the Convention gives states the option of filling declarations at using time excluding specified types of disputes from arbitration or adjudication.

These may be briefly commented as follows:

a. Disputes concerning delimitation of maritime boundaries between neighboring states;

b. Disputes concerning military countries, and disputes concerning certain coastal state law enforcement activities respect to Fisheries and scientific research the areas subject to its jurisdiction.

c. Disputes in respect of which the UN Security Council removes the matter from its agenda or call upon the parties to settle it by the means provided for in the Convention.

There are some problems in the Article 287 of the Convention. One defect of this virtue is that it takes considerable time to select the arbitrations. What happens in the interim if the problem is urgent?

**Grand Prince Case (Belize V/s France)**

As per the factual background is concerned on 16 March 2001, the Registrar of the Tribunal was notified by a letter from the Attorney General of Belize and Minister responsible for the International Merchant Marine Registry of Belize dated 15th March 2001, transmitted by facsimile that Mr. Alberto Penals Alvarez was authorized to make an application to the tribunal on behalf of Belize under article 292 of the UNCLOS, with respect to the fishing vessel Grant Prince.
In the ‘Volga Case Russian Federation V/s Australia’\textsuperscript{123} the ITLOS experienced the question whether it has jurisdiction to entertain the application and whether the application is admissible. Facts of the case as follows:

The Volga is a long time fishing vessel flying the flag of the Russian Federation. Its owner is Olbers Co ltd, a company incorporated in Russia. The Master of the Volga was Alexander Vasilkov, a Russian national. According to the certificate of Registration, the Volga was entered in the state ships registry of Taganrog Maritime Fishing Port on 6 September 2000. On 24 November 2000, the ITLOS held that the applicant alleged that the Respondent has not completed with article 73, paragraph 2 of the Convention concerning the prompt release of the three members of the crew and vessel, upon the posting of a reasonable bond or security.

In accordance with the allegation it submitted that the Respondent has set conditions for the release of the vessel and three members of the crew which are not permissible under article 73, paragraph 2 or are unreasonable in terms of article 73, paragraph 2 of the Convention. On the basis of arguments the tribunal opined that a bond for the release of the Volga, the fuel, lubricants and fishing equipment should be in the amount of US $ 1,920,000. It has been held that the band or other security should be, unless the parties otherwise agree, in the form of a bank guarantee from a bank present in Australia or having corresponding arrangements with an Australian bank.

Experience indicates that resorting to an International Commission to settle disputed matters, although not binding on the parties to the dispute, usually proves successful. Nevertheless, commentators have pointed out the incompatibility of international law with the doctrine of state sovereignty.
Although it is paradoxical to expect sovereign states to submit to the will of another state, bilateral or multilateral agreements with a minimum of ambiguity were indeed necessary in governing the resources of the sea. Justifiable questions pertaining to the interpretation or application of international law are considered to have a legal basis and are best served by binding adjudication, whereas disputes arising from disregarding a law or from the desire to change the law are assumed to be politically motivated and no justifiable.

In the leading case between **Chile and the European Community**\(^\text{124}\) concerning the conservation of Swordfish in the Southern Eastern Pacific Ocean, the Special Chamber has been adopted an order for a further extension of time limits. The Special Chamber of the Tribunal has been constituted to deal with the case pertaining to the conservation and sustainable exploitation of Swordfish stock in the South Eastern Pacific Ocean. This case was filed before Special Chamber of the Tribunal at the request of Chile and European community on 19 December 2000. This case has not been decided yet. However, at the request of the parties to the dispute, the time limits for raising preliminary objections were first extended to 1 January 2004 and then to 1 January 2006, by order of 15 March 2001 and 16 December 2003, particularly.

The case concerns whether the European Community has complained with its obligations under the UNCLOS to ensure the conservation of Swordfish in the fishing countries undertaken by vessels flying the flag of its Member States in the high seas adjacent to Chilies EEZ. In a leading case **Juno Trader (Saint Vincent and the Grenadines V/s Guinea – Bislau)**\(^\text{125}\) the Tribunal examined the objection to its jurisdiction raised by the Respondent on the ground that according to its national jurisdiction, the ownership of the vessel Juno Trader reverted to the state of Guinea
Bissau with effect from 5 November 2004 and that therefore Saint Vincent and the Grenadines cannot any more be considered as the flag state of the vessel. Facts of the case is the dispute concerns the detention of the vessel Juno Trader and its crew by the authorities of Guinea-Bissau for the alleged infringement of National Fisheries Legislation in its EEZ. Further the Tribunal examined the question as to whether the allegation that the Respondent has violated the provisions of the Convention 1982 for the prompt release of an arrested vessels and its crew upon the posting of the reasonable bond or other financial security is well founded.

According to the facts of the case the Tribunal, adopted the following points:

1. Unanimously finds that the Tribunal has jurisdiction under article 292 of the Convention to entertain the application submitted on behalf of Saint Vincent and the Grenadines on 18 November 2004.

2. Unanimously finds that the allegation made by the applicant that the Respondent has not complied with the provision of article 73, paragraph 2, of the Convention for the prompt release of the Juno Trader and its crew

Disputes before the Tribunal are instituted either by written application or by notification of a special agreement. The procedure to be followed for the conduct of cases submitted to the Tribunal is defined in its Statute and Rules. According to article 187 the jurisdiction of the SDC should be disputes between states parties concerning the interpretation or application of the part XI and Annexes relating the exploration and exploitation of resources. Also, it has jurisdiction to control over disputes between state party and Authority concerning the acts or omissions of the Authority or of a state party alleged to be in violation of part XI of 1982 Convention. The SDC has jurisdiction over disputes with respect to activities in the Area, as
defined in article 1 of the Convention, falling within the categories referred to in article 187, subparagraphs (a) to (f), of the Convention. Parties to such disputes may be States Parties, the ISA, the Enterprise, state enterprises and natural or juridical persons referred to in article 153, paragraph 2(b), of the Convention.  

Part XV of the Convention lay down a comprehensive system for the settlement of disputes that might arise with respect to the interpretation and application of the Convention. It requires states parties to settle their disputes concerning the interpretation or application of the Convention by peaceful means indicated in the Charter of the United Nations. However, if parties to a dispute fail to reach a settlement by peaceful means of their own choice, they are obliged to resort to the compulsory dispute settlement procedures entailing binding decisions, subject to limitations and exceptions contained in the Convention.

**Malaysia v/s Singapore**

On 5 September 2003, Malaysia submitted a request for the prescription of provisional measures under article 290, paragraph 5, of the Convention. The factual background pertaining to this case was land reclamation activities carried out by Singapore, which separate the island of Singapore from Malaysia.

According to Article 290 of the Convention, The Tribunal, pending the constitution of the arbitral tribunal, may prescribe provisional measures if it considers provisional measures appropriate to "preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment" and if it considers that *prima facie* the arbitral tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. So far as the order of 8 Oct 2003 the Tribunal held that Malaysia was not obliged to continue with an exchange of views
when it concluded this exchange could not yield a positive results it is doubtful now far any of the forgoing represents preexisting customary international law. In so far as there have been customary obligations concerning pollution, they have been obligations imposing responsibility for causing loss or damage to other states not for protecting the marine environment or controlling pollution by regulation. The most sticking achievement of the Convention in this regard is the creation of a legal regime whose primary focus is not obligations of responsibility for damage. The Mox Plant Case\textsuperscript{130} (Ireland v/s Kingdom) the same process of the law has been identified . In view of this the Ireland requested to ITLOS. The Tribunal prescribed the following provisional measures:

1) That the United Kingdom immediately suspend the authorization of the MOX plant dated 3 October 2001, alternatively take such other measures as are necessary to prevent with immediate effect the operation of the MOX plant;

2) That the United Kingdom immediately ensure that there are no movements into or out of the waters over which it has sovereignty or exercises sovereign rights of any radioactive substances or materials or wastes which are associated with the operation of, or activities preparatory to the operation of, the MOX plant;

3) That the United Kingdom ensures that no action of any kind is taken which might aggravate, extend or render more difficult of solution the dispute submitted to the Annex VII tribunal

4) That the United Kingdom ensures that no action is taken which might prejudice the rights of Ireland in respect of the carrying out of any decision on the merits that the Annex VII tribunal may render According to article 290 of the Convention, the Tribunal may prescribe provisional measures if it considers
provisional measures appropriate to "preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment" and if it considers that certain requirements have been met, namely that *prima facie* the arbitral tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires.

International legal regime and the mechanisms regulating the exploration and exploitation of the seabed as well as the activities in the Area involve, in addition to the states parties to the Convention, several entities other than states and juridical and natural persons and can lead to various disputes. It is thus, extremely important that the systems of settlement of disputes, mainly exercised by the Chamber, shall be complete and cohesive and shall assure, to the largest extent possible, the integrity of this regime and uniformity in the application and interpretation of its provision. Although the SDC has power it has its own limitation. Limitations on the jurisdiction of the SDC as follows:

a) Limitations with respects to parties to the disputes or to the categories of disputes;

b) Limitations on jurisdiction of the SDC with respect to decisions of the Authority.

On the other hand, the Chamber does not have the power to declare invalid rules, regulations, or procedure to be not in conformity with the provisions of the Conventions. There is misuse of the power, and claims for damages to be paid or other remedy to be given to the party concerned. The SDC has no jurisdiction with regard to the exercise by the ISA of its discretionary powers and it has no competence to pronounce itself on the question of whether any rules, regulations and procedures
of the ISA are in conformity with the Convention or to declare them invalid (Convention, article 189).

The Authority is authorized to take actions against anyone who violates these obligations; the overall structure of relations between the Authority and contractors follows the parallel system specified in the Convention as modified by the 1994 Agreement. The Authority will be subject to pressures for change, both from its natural evolution as an organization and from external developments.

Even without changes of the Convention and Agreement, a future Authority could be quite different if the rules of the organizations, the principles favored by its members and the norms and practices of the people who make up the delegations and secretariat change. Guiding an organization through its governance phase, especially through periods of adjustment, should be these factors that affect its operations. This requires active engagement in the process, not sitting outside the organization and sending directives for or against specific actions.

The Authority established Mining Code for ocean governance. The purpose of this Mining Code, known normally as Draft Regulations on Prospecting and Exploration for Polymetallic Nodules in the International Seabed Area, is set out the conditions under which states and other entities will contract with the Authority to carry out activities in the Area. The framework for this new international regime is set out in the Law of the Sea Convention, according to which the Authority is to regulate activities through a system of contracts, reporting and inspections. The Convention lays stress in particular the need to protect the marine environment against any harmful effects of dredging and other work involved in mineral exploration. The aim of the code, in elaborating the Convention, provisions, is to set
our specific rights; duties and understanding that will legally bind the Authority and contractors.

5.10 Conclusions

Since its established in 1994, the Authority has successfully established itself as a fully functional and autonomy international organization within the United Nations common system. As for as the Authority is concerned, it seems to be that the most difficult issues in the law of the sea at present is how to preserve the delicate balance struck in the Convention between rights, duties and interests of coastal states in respect of areas within national jurisdiction and the right and interests of the international community as a whole in areas beyond national jurisdiction, including in the Area. The Authority will be subject to pressures for change, both from its natural evolution as an organization and from external developments.

Even without changes of the Convention and Agreement, a future Authority could be quite different if the rules of the organizations, the principles favored by its members and the norms and practices of the people who make up the delegations and secretariat change. Guiding an organization through its governance phase, especially through periods of adjustment, should be these factors that affect its operations. This requires active engagement in the process, not sitting outside the organization and sending directives for or against specific actions. In addition to its administrative and regulatory decisions, the Authority has developed a knowledge gathering and management program that encourages and coordinates international researchers to enhance the scientific and technical understanding required for regulation of future mining activities in the Area.
As a result of developments in marine science and technology, the possibility exists for tension between these interests to develop in certain critical areas. However, one of the greatest achievements of the 1982 Convention is that although like any treaty, it is linked to the moment when it was adopted on the balance of interests which existed at that time, it has also proved itself to be remarkably resilient. In spite of the erosive effects of differing interpretations of the provisions of the Convention, inconsistencies in state practice, the evolution of new political, economic and ecological boundaries, the norms contained on the Convention remains the basis of the legal framework for ocean governance.
Chapter Notes

1. China, Japan, Government of India, Korea, France, Russian Federation, Bulgaria; These States are very much interested in the exploration and exploitation of resources of the ocean. They have contracted with International Seabed Authority. COMRA, DORC, Government of India, Government of Republic of Korea, IFF MER, Yuzhomorageolgiya.

2. See Part XI of the 1982 Convention; also See 1994 Agreement for the Implementation of the 1982 Convention. The 1982 Law of the Sea Conventional provisions on resources in the deep seabed, Part XI (Article 136-153, what is called the ‘Area’. These provisions delayed the treaty is entry into force for more a decade. Developed nations had been profitably mining the ocean under the high seas for decades before promulgation of the 1982 UNCLOS.

3. Article 136 of the 1984 Convention; Rama Rao, T, ‘Law relating to pollution international and India law’, (Ed) N. Krishnan, Indian Ocean problems and prospective for co-operation, pp. 80-87; The CHM doctrine suggests that all people have an entitlement to resources of some common space areas, such as the deep seabed, the moon and Antarctica. The nature of that entitlement is a matter of great debate; where the CHM is incorporated into treaties, it retaining extensive benefits for those who would claim special rights in the name of merit or utility.

4. Parties to the Convention


6. Ibid p 30

7. Arvid Parado speeches, 1967 UN


10. See General Principles Governing the Seabed Area


13. Supra Note 10


16. Supra No. 10 & 5


18. Marine scientific research is essentially an international activity because it demands that would be integrate whole oceanographic terms.


20. The ISA created by UNCLOS III came into being as a concession to Third World Nations


22. See Article and 2 of the United Nations Charters 1945


24. The Preparatory Commission provides transnational planning for the International Tribunal for the Law of the Sea and the I.S.A. Under the parallel
system of 1982 Convention on the Law of the Sea, the Authority will oversee and participate in the exploration and exploitation of the mineral resources of the deep seabed and will share financial and other benefits equitably. The Commission also by broad responsibility to prepare draft rules, regulators and procedures necessary to enable the Authority to begin its work. The draft rules will common, economic, technical, administrative and legal matters relating to prospecting exploration and exploitation of the seabed beyond national jurisdiction.

25. Art 136
26. Article 145
27. ISA Press Release, 8th Session, Kingston Jamaica, August 2002
28. Ibid.
29. General Principles Governing the Seabed Area like CHM, common benefit, peaceful use of natural resource of the seabed. See Part XI of the 1982 Convention
32. Rio Declaration Principle 15
33. ISA 10th Session, Jamaica Press Release, May 2004, SB/10, 124 May 2004 ISA its 10th Annual Secretary General
35. Ibid. 143
36. Ibid 145


45. See Article 76 of 1982 Convention

46. Ibid. Article 76

47. Ibid Article 82

48. Ibid-82


50. See Art 162 paragraph 2 and Principles Governs the Prospecting, Exploration and Exploitation in the Area 2000.

51. Art. 160

52. Ibid-160

53. See Art XI

54. Supra Note 49

55. 1982 Convention

56. Ibid-1982

58. Guidelines for Prospecting and Exploring the Polymetallic Nodes and Sulphides 2000


61. Ibid p 644

62. Ibid p.650


64. Ibid p 644

65. Art 162

66. www.ISA.org/court

67. The views of the Group of 77 are contained in a document entitled legal position of the Group of 77 on the quantity of Unilateral Legislation Concerning for Explorations and Exploitations of the Seabed and Ocean floor and Sub soil Thereof Beyond National Jurisdiction, UN Doc A/Cong. 62/106

68. Ibid; Declaration of Legal Principles Governing the Activities of States on the Exploration and use of Outer Space, GA Res. 1962, UN, GAOR supp. UN DOC A (5515/96)

69. See 1994 Agreement


71. Supra note 70

72. Art 166

73. Art 173

Many factors will influence the future work of the Preparatory Commission. First, recent predicts suggest that economic and technological factors may well delay the comment of commercially feasible mining sometime in the 21st Century. The timetable may make it difficult for the commission to develop complete draft rules and regulations to govern the activities of mining states and consortia. Some have also urged that nations should prevalent parties of part XI of the 1982 Convention in light of changing market circumstances. The Preparatory Commission may well be the forum in which a case develops about needed changes on the Convention and about how to implement them.

Maritaka Hayasli, ‘Registration of the first group of pioneer investors of the Preparatory Commission for the ISA’, Ocean Development and International Law, (Vol 20, No.1 1989), pp.1-12 at p.3.

Pioneer Activities are defined in resolution II, paragraph 1(b) as undertaking, commitments of financial and other assets, investigating certain findings, research, engineering, development and other activities relevant to the identification discovery, and systematic analysis and evolution of polymetallic nodules are determination of the technical and economic feasibility of exploration.

The Preparatory Commission for the ISA and for the International Tribunal for the Law of the Sea was created by the Third UN Conference on the Law of the Sea for three reasons. One was the creation in the Convention of ISA. Another was the creation in the same Convention of an International Tribunal for the Law of the Sea. The Third region parties to the implementation of a pioneer regime as envisioned in a resolution adopted by the Conference to protect the investments in pioneering deep seabed mining technology undertaken by certain developed countries.


Ibid. Art 145
83. Supra note 1


90. Ibid p.10

91. ISA Press Release, 9th Session, Kingston Jamaica, 2003


93. Art. 153


96. Art. 145; read with principle 15 of Rio Declaration on Environment and Development States in order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are thousands of serious or irrevocable damage, lack of all

97. Art 153


99. Art 170

100. Section 2, 1994, Agreement

101. Ibid Sec 2


271

Ibid p.348

Article 14 Section 4 of the Annex

Ibid art 14

Ibid Art 156

http://www.itols.org and http://tidm


Article 115, 982 Convention

Ibid 293

1994 Agreement for the Implementation of Part xi of the Law of the Sea

http://www.itols.org and http://tidm

Article 280 –281

Article 297

See Article 298

International Tribunal for the Law of the Sea, year 2001 April list of the cases NO-8 Belize v/s France Available at http://www.itols.org andhttp://www.itols.org

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125. International Tribunal for the Law of the Sea, year 2004 December list of the
Available at http://www.itols.org and http://www.itols.org

126. Article 192

127. Article 187

128. Article 153 Paragraph 2(d)
