

[ENGLISH TEXT — TEXTE ANGLAIS]

PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL SEABED AUTHORITY

The States Parties to this Protocol,

Considering that the United Nations Convention on the Law of the Sea establishes the International Seabed Authority,

Recalling that article 176 of the United Nations Convention on the Law of the Sea provides that the Authority shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes,

Noting that article 177 of the United Nations Convention on the Law of the Sea provides that the Authority shall enjoy in the territory of each State Party to the Convention the privileges and immunities set forth in section 4, subsection G of Part XI of the Convention and that the privileges and immunities of the Enterprise shall be those set forth in annex IV, article I3,

Recognizing that certain additional privileges and immunities are necessary for the exercise of the functions of the International Seabed Authority,

Have agreed as follows:

Article 1. Use of terms

For the purposes of this Protocol:

- (a) "Authority" means the International Seabed Authority;
- (b) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;
- (c) "Agreement" means the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. In accordance with the Agreement, its provisions and Part XI of the Convention are to be interpreted and applied together as a single instrument; this Protocol and references in this Protocol to the Convention are to be interpreted and applied accordingly;
- (d) "Enterprise" means the organ of the Authority as provided for in the Convention;
- (e) "member of the Authority" means:
 - (i) any State Party to the Convention; and
 - (ii) any State or entity which is a member of the Authority on a provisional basis pursuant to paragraph 12 (a) of section 1 of the annex to the Agreement;
- (f) "representatives" means representatives, alternate representatives, advisers, technical experts and secretaries of the delegations;
- (g) "Secretary-General" means the Secretary-General of the International Seabed Authority.

Article 2. General provision

Without prejudice to the legal status, privileges and immunities accorded to the Authority and the Enterprise set forth in section 4, subsection G, of Part XI and Annex IV, article 13, of the Convention respectively, each State party to this Protocol shall accord to the Authority and its organs, the representatives of members of the Authority, officials of the Authority and experts on mission for the Authority such privileges and immunities as are specified in this Protocol.

Article 3. Legal personality of the Authority

1. The Authority shall possess legal personality. It shall have the legal capacity:
 - (a) to contract;
 - (b) to acquire and dispose of immovable and movable property;
 - (c) to be a party in legal proceedings.

Article 4. Inviolability of the premises of the Authority

The premises of the Authority shall be inviolable.

Article 5. Financial facilities of the Authority

1. Without being restricted by financial controls, regulations or moratoriums of any kind, the Authority may freely:
 - (a) purchase any currencies through authorized channels and hold and dispose of them;
 - (b) hold funds, securities, gold, precious metals or currency of any kind and operate accounts in any currency;
 - (c) transfer its funds, securities, gold or currency from one country to another or within any country and convert any currency held by it into any other currency.
2. The Authority shall, in exercising its rights under paragraph 1 of this article, pay due regard to any representations made by the Government of any member of the Authority insofar as it is considered that effect can be given to such representations without detriment to the interests of the Authority.

Article 6. Flag and emblem

The Authority shall be entitled to display its flag and emblem at its premises and on vehicles used for official purposes.

Article 7. Representatives of members of the Authority

1. Representatives of members of the Authority attending meetings convened by the Authority shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) immunity from legal process in respect of words spoken or written, and all acts performed by them in the exercise of their functions, except to the extent that the member which they represent expressly waives this immunity in a particular case;

(b) immunity from personal arrest or detention and the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys;

(c) inviolability for all papers and documents;

(d) the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(e) exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;

(f) the same facilities as regards exchange restrictions as are accorded to representatives of foreign Governments of comparable rank on temporary official missions.

2. In order to secure, for the representatives of members of the Authority, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of all acts done by them in discharging their functions shall continue to be accorded, notwithstanding that the persons concerned are no longer representatives of members of the Authority.

3. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of members of the Authority attending the meetings of the Authority are present in the territory of a member of the Authority for the discharge of their duties shall not be considered as periods of residence.

4. Privileges and immunities are accorded to the representatives of members of the Authority, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Authority. Consequently, a member of the Authority has the right and the duty to waive the immunity of its representative in any case where in the opinion of the member of the Authority the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

5. Representatives of members of the Authority shall have insurance coverage against third-party risks in respect of vehicles owned or operated by them, as required by the laws and regulations of the State in which the vehicle is operated.

6. The provisions of paragraphs 1, 2 and 3 are not applicable as between a representative and the authorities of the member of the Authority of which he is a national or of which he or she is or has been a representative.

Article 8. Officials

1. The Secretary-General will specify the categories of officials to which the provisions of paragraph 2 of this article shall apply. The Secretary-General shall submit these categories to the Assembly. Thereafter these categories shall be communicated to the Governments of all members of the Authority. The names of the officials included in these categories shall from time to time be made known to the Governments of members of the Authority.

2. Officials of the Authority, regardless of nationality, shall:

(a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(b) be immune from personal arrest or detention in relation to acts performed by them in their official capacity;

(c) be exempt from tax in respect of salaries and emoluments paid or any other form of payment made by the Authority;

(d) be immune from national service obligations provided that, in relation to States of which they are national, such immunity shall be confined to officials of the Authority whose names have, by reason of their duties, been placed upon a list compiled by the Secretary-General and approved by the State concerned; should other officials of the Authority be called up for national service, the State concerned shall, at the request of the Secretary-General, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work;

(e) be exempt, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(f) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Governments concerned;

(g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question;

(h) be exempt from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the Party concerned; and inspection in such a case shall be conducted in the presence of the official concerned, and in the case of official baggage, in the presence of the Secretary-General or his or her authorized representative;

(i) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as are accorded to diplomatic agents.

3. In addition to the privileges and immunities specified in paragraph 2, the Secretary-General or any official acting on his behalf during his absence from duty and the Director-General of the Enterprise shall be accorded in respect of themselves, their spouses and minor children the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

4. Privileges and immunities are accorded to officials, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Authority. The Secretary-General has the right and the duty to waive the immunity of any official where, in the opinion of the Secretary-General, the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Authority. In case of the Secretary-General, the Assembly shall have the right to waive immunity.

5. The Authority shall cooperate at all times with the appropriate authorities of members of the Authority to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities referred to in this article.

6. Pursuant to the laws and regulations of the State concerned, the officials of the Authority shall be required to have insurance coverage against third-party risks in respect of vehicles owned or operated by them.

Article 9. Experts on mission for the Authority

1. Experts (other than officials coming within the scope of article 8) performing missions for the Authority shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

(a) immunity from personal arrest or detention and from seizure of their personal baggage;

(b) in respect of words spoken or written and acts done by them in the exercise of their functions, immunity from legal process of every kind. This immunity shall continue notwithstanding that the persons concerned are no longer employed on missions for the Authority;

(c) inviolability for all papers and documents;

(d) for the purposes of their communications with the Authority, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(e) exemption from tax in respect of salaries and emoluments paid or any other form of payment made by the Authority. This provision is not applicable as between an expert and the member of the Authority of which he or she is a national;

(f) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions.

2. Privileges and immunities are accorded to experts, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Authority. The Secretary-General shall have the right and the duty to waive the immunity of any expert where, in the opinion of the Secretary-General, the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Authority.

Article 10. Respect for laws and regulations

Without prejudice to their privileges and immunities, it is the duty of all persons referred to in articles 7, 8 and 9 to respect the laws and regulations of the member of the Authority in whose territory they may be on the business of the Authority or through whose territory they may pass on such business. They also have a duty not to interfere in the internal affairs of that member.

Article 11. Laissez-passer and visas

1. Without prejudice to the possibility for the Authority to issue its own travel documents, the States Parties to this Protocol shall recognize and accept the United Nations laissez-passer issued to officials of the Authority.

2. Applications for visas (where required) from officials of the Authority shall be dealt with as speedily as possible. Applications for visas (where required) from officials of the Authority holding United Nations laissez-passer shall be accompanied by a document confirming that they are travelling on the official business of the Authority.

Article 12. Relationship between the Headquarters Agreement and the Protocol

The provisions of this Protocol shall be complementary to the provisions of the Headquarters Agreement. Insofar as any provision of this Protocol relates to the same subject matter, the two provisions shall, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other; but in any case of conflict, the provisions of that Agreement shall prevail.

Article 13. Supplementary agreement

This Protocol shall in no way limit or prejudice the privileges and immunities which have been, or may hereafter be, accorded to the Authority by any member of the Authority by reason of the location in the territory of that member of the Authority's headquarters or regional centres or offices. This Protocol shall not be deemed to prevent the conclusion of supplementary agreements between the Authority and any member of the Authority.

Article 14. Settlement of disputes

I. In connection with the implementation of the privileges and immunities granted under this Protocol, the Authority shall make suitable provision for the proper settlement of:

- (a) disputes of a private law character to which the Authority is a party;
- (b) disputes involving any official of the Authority or any expert on mission for the Authority who by reason of his or her official position enjoys immunity, if immunity has not been waived by the Secretary-General.

2. Any dispute between the Authority and a member of the Authority concerning the interpretation or application of this Protocol which is not settled by consultation, negotiation or other agreed mode of settlement within three months following a request by one of the parties to the dispute shall, at the request of either party, be referred for a final and binding decision to a panel of three arbitrators:

(a) one to be nominated by the Secretary-General, one to be nominated by the other party to the dispute and the third, who shall be Chairman of the panel, to be chosen by the first two arbitrators;

(b) if either party has failed to make its appointment of an arbitrator within two months of the appointment of an arbitrator by the other party, the President of the International Tribunal for the Law of the Sea shall proceed to make such appointment. Should the first two arbitrators fail to agree upon the appointment of the third arbitrator within three months following the appointment of the first two arbitrators, the third arbitrator shall be chosen by the President of the International Tribunal for the Law of the Sea upon the request of the Secretary-General or the other party to the dispute.

Article 15. Signature

This Protocol shall be open for signature by all members of the Authority at the headquarters of the International Seabed Authority in Kingston, Jamaica, from 17 August until 28 August 1998 and subsequently until 16 August 2000 at United Nations Headquarters in New York.

Article 16. Ratification

This Protocol is subject to ratification, approval or acceptance. The instruments of ratification, approval or acceptance shall be deposited with the Secretary-General of the United Nations.

Article 17. Accession

This Protocol shall remain open for accession by all members of the Authority. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18. Entry into force

1. The Protocol shall enter into force 30 days after the date of deposit of the tenth instrument of ratification, approval, acceptance or accession.

2. For each member of the Authority which ratifies, approves or accepts this Protocol or accedes thereto after the deposit of the tenth instrument of ratification, approval, acceptance or accession, this Protocol shall enter into force on the thirtieth day following the deposit of its instrument of ratification, approval, acceptance or accession.

Article 19. Provisional application

A State which intends to ratify, approve, accept or accede to this Protocol may at any time notify the depositary that it will apply this Protocol provisionally for a period not exceeding two years.

Article 20. Denunciation

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Protocol. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Protocol to which it would be subject under international law independently of this Protocol.

Article 21. Depositary

The Secretary-General of the United Nations shall be the depositary of this Protocol.

Article 22. Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Protocol are equally authentic.

In Witness Whereof, the undersigned Plenipotentiaries, being duly authorized thereto, have signed the Protocol.

Opened for Signature at Kingston, from the seventeenth to the twenty-eighth day of August one thousand nine hundred and ninety-eight, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

[For the signatories, see p.194 of this volume.]