PART I. USE OF TERMS

Article 1. Use of terms

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Article 33. Contiguous zone

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PART IV. ARCHIPELAGIC STATES

Article 46. Use of terms

Article 47. Archipelagic baselines
Part XVI. Final clauses

Article 288. Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 289. Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 300. Entry into force

1. The present Convention shall enter into force on the ... day following the date of deposit of the ... instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the ... instrument of ratification or accession, the Convention shall enter into force on the ... day after the deposit by such State of its instrument of ratification or accession.

Article 301. Status of annexes

The annexes form an integral part of the present Convention, and unless expressly provided otherwise, a reference to the present Convention constitutes a reference to its annexes.

Article 302. Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send copies thereof to all States.

Article 303. Testamentum clause, place and date

In witness whereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE AT Caracas, this ... day of ..., one thousand nine hundred and seventy ...

Transitional provision

1. The rights recognized or established by the present Convention to the resources of a territory whose people have not attained either full independence or some other self-governing status recognized by the United Nations, or a territory under foreign occupation or colonial domination, or a United Nations Trust Territory, or a territory administered by the United Nations, shall be vested in the inhabitants of that territory, to be exercised by them for their own benefit and in accordance with their own needs and requirements.

2. Where a dispute over the sovereignty of a territory under foreign occupation or colonial domination exists, in respect of which the United Nations has recommended specific means of solution, rights referred to in paragraph 1 shall not be exercised except with the prior consent of the parties to the dispute until such dispute is settled in accordance with the purposes and principles of the Charter of the United Nations.

3. A metropolitan or foreign power administering, occupying or purporting to administer or occupy a territory may not in any case exercise, profit, or benefit from or in any way infringe the rights referred to in paragraph 1.

4. Reference in this article to a territory include continental territories and islands.

ANNEXES

ANNEX I

Highly migratory species

1. Albacore tuna: Thunnus alalunga.

2. Bluefin tuna: Thunnus thynnus.


5. Yellowfin tuna: Thunnus albacares.


7. Little tuna: Euthynnus alletteratus; Euthynnus affinis.

8. Prickte mackerel: Auxis thazard; Auxis rochedi.


10. Marlins: Tetrapurus anguillrostris; Tetrapurus binae; Tetrapurus pygmeus; Tetrapurus albidus; Tetrapurus audouini; Tetrapurus georgii; Makaira mazara; Makaira indica; Makaira nigripes.


13. Skates: Scopelusaurus saurus; Cololabe saira; Cololabe alboterminatus; Scopelotremus saclairi.

14. Dolphins: Coryphaena hippurus; Coryphaena equilis.

15. Oceanic sharks: Hexanchus griseus; Carcharias maxima; Family Alopidae; Rhinodontypus; Family Carcharhinidae; Family Sphyridae; Family Isuridae.

16. celacancas: Family Physeteridae; Family Balaenopteridae; Family Balaenidae; Family Balaenopteridae; Family Monodontidae; Family Ziphiidae; Family Delphinidae.

ANNEX II

Basic conditions of exploration and exploitation

Title to minerals and processed substances

1. Title to the minerals shall normally be based upon recovery of the minerals pursuant to a contract of exploration and exploitation. In the case of contracts pursuant to subparagraph (b) of paragraph 8 of this annex for stages of operations, title to the minerals or processed substances shall pass in accordance with the contract. This paragraph is without prejudice to the rights of the Authority under paragraph 7 of this annex.

Prospecting

2. (a) The Authority shall encourage the conduct of prospecting in the Area. Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with the present Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, the transfer of data to the Authority, the training of personnel designated by the Authority and the receipt of notification of compliance by the Authority with all of its rules and regulations in so far as they relate to prospecting. The proposed prospector shall, together with the undertaking, notify the Authority of the broad area or areas in which prospecting is to take place. Prospecting may be carried out by more than one prospector in the same area or areas simultaneously. The Authority may close a particular area for prospecting when the available data indicates the risk of irreparable harm to the marine environment or unreasonable interference with other uses of the Area.

(b) Prospecting shall not confer any preferential, proprietary or exclusive rights on the prospector with respect to the resources or minerals.

Exploration and exploitation

3. (a) Exploration and exploitation shall only be carried out in areas specified in plans of work referred to in paragraph 8 of article 151 and approved by the Authority in
accordance with the provisions of this annex and the relevant rules, regulations and procedures adopted pursuant to paragraph 11 of this annex.

(b) Contracts shall normally cover all stages of operations. If the applicant for a contract applies for a specific stage or stages, the contract may only commence such stage or stages. Nothing in this paragraph shall in any way limit the discretion of the Authority.

(c) Every contract entered into by the Authority shall:

(1) Be in strict conformity with the present Convention and the rules and regulations prescribed by the Authority;

(2) Ensure control by the Authority at all stages of operations in accordance with paragraph 4 of article 151;

(3) Confer exclusive rights on the Contractor in the contract area in accordance with the rules and regulations of the Authority.

Qualifications of applicants

4. (a) The Authority shall adopt appropriate administrative procedures and rules and regulations for making an application and for the qualifications of an applicant. Such qualifications shall include financial standing, technological capability and satisfactory performance under any previous contracts with the Authority.

(b) The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.

(c) Every applicant without exception shall:

(1) Undertake to comply with and to accept as enforceable the obligations created by the provisions of Part XI of the present Convention, the rules and regulations adopted by the Authority, and the decisions of its organs and the terms of contracts, and to accept control by the Authority in accordance therewith;

(2) Undertake to negotiate upon the conclusion of the contract, if the Authority shall so request, an agreement making available to the Enterprise under licence, the technology used or to be used by the applicant, in carrying out activities in the Area on fair and reasonable terms in accordance with subparagraph (1) (iv) of paragraph 5 of this annex;

(3) Accept control by the Authority in accordance with subparagraph (c) (ii) of paragraph 3;

(4) Provide the Authority with satisfactory assurances that its obligations under the contract entered into by it will be fulfilled in good faith.

Selection of applicants

5. (a) On the first day of the sixth month after the entry into force of this Part of the present Convention, and thereafter each fourth month on the first day of that month, the Authority shall take up for consideration applications received for contracts with respect to activities of exploration and exploitation.

(b) When considering an application for a contract with respect to exploration and exploitation, the Authority shall first ascertain whether

(1) the applicant has complied with the procedures established for applications in accordance with paragraph 4 of this annex and has given the Authority the commitments and assurances required by that paragraph. In cases of non-compliance with these procedures or of absence of any of the commitments and assurances referred to, the applicant shall be given 20 days to remedy such defects;

(2) the applicant possesses the requisite qualifications set forth in paragraph 4.

(c) Once it is established that the conditions referred to in subparagraph (b) above are met, the Authority shall determine whether more than one application has been received within the preceding time period as provided in subparagraph (a) above in respect of substantially the same area or category of minerals and whether the granting of a contract would be in conformity with the provisions of subparagraph (g) of paragraph 1 of article 150 and the relevant decisions of the Authority. In implementation thereof, if no competing application has been received, and if the granting of a contract would be in conformity with subparagraph (g) of paragraph 1 of article 150, the Authority shall, without delay, enter into negotiations with the applicant with a view to concluding a contract.

(d) The negotiations referred to in subparagraph (c) above shall, within the framework of the provisions of Part XI of the present Convention and the rules, regulations and procedures of the Authority adopted under subparagraph (c) (vi) of paragraph 2 of article 158 and subparagraph (c) (iv) of paragraph 2 of article 160, deal with:

(i) operational requirements under regulations adopted pursuant to paragraph 11 of this annex such as duration of activities, size of area, performance requirements and protection of the marine environment;

(ii) the financial contribution to be made by the applicant under the financial arrangements established in paragraph 7 of this annex and the terms in the project by developing countries, on the basis of the incentives for such participation established in paragraph 7;

(iii) transfer of technology under programmes and measures pursuant to article 144, and subparagraph (c) (ii) of paragraph 4 of this annex.

(e) In the course of the negotiations referred to in subparagraph (d) above, and prior to the conclusion of a contract, the Authority shall ensure that no contract would be in full conformity with the provisions of Part XI of the present Convention and the rules and regulations adopted by the Authority in accordance with subparagraph (c) (vi) of paragraph 2 of article 158 and subparagraph (c) (iv) of paragraph 2 of article 160, in particular, the provisions, rules, regulations and procedures on the issues enumerated in subparagraph (d) above, and the provisions of subparagraph (g) of paragraph 1 of article 150, and the relevant decisions of the Authority in its implementation thereof.

(f) The negotiations referred to in subparagraph (d) above shall be conducted as expeditiously as possible. As soon as the issues under negotiation in accordance with subparagraph (d) above have been settled, the Authority shall conclude the corresponding contract with the applicant. In cases of refusal of contract the Authority shall state the reasons for such refusal.

(g) If the Authority receives within the applicable time period as provided in subparagraph (e) above more than one application in respect of substantially the same part of the Area and category of minerals, or if the applications received within that time period cannot all be accommodated within the production limits established in subparagraph (g) of paragraph 1 of article 150, selection among the applicants shall be made on a comparative basis. In accordance with subparagraphs (c) and (d), the Authority shall enter into negotiations with the applicants in order to make its selection on the basis of a comparative evaluation of their applications and qualifications. In so doing the Authority shall also take into account the need to give reasonable priority to applicants who are ready to enter into such joint arrangements with the Enterprise as referred to in subparagraphs (b) and (d) below. Once the selection is made, the Authority shall enter into negotiations with the selected applicant or applicants on the terms of a contract in accordance with subparagraphs (c) and (d) above.

(h) If the Contractor in accordance with subparagraph (b) of paragraph 3 of this annex has entered into a contract with the Authority for separate stages of operations, he shall have the preference and a priority among applicants for subsequent stages of operations with regard to the same areas and resources; provided, however, that where the Con-
(k) Contractors entering into such joint arrangements with the Enterprise as referred to in subparagraph (i) and (j) (iii) above shall receive financial incentives as provided for in the financial arrangements established in paragraph 7 of this annex.

(i) While the inclusion of a quota or anti-monopoly provision appears to be acceptable in principle, its detailed formulation has yet to be fully negotiated.

Activities conducted by the Enterprise

6. Activities in the Areas conducted under subparagraph (i) of paragraph 2 of article 151 through the Enterprise shall be governed by the provisions of Part XI of the present Convention including the resource policy set forth in article 150 and the relevant decisions of the Authority in implementation thereof, as well as the statutes of the Enterprise and by the rules, regulations and procedures adopted under subparagraph (xvi) of paragraph 2 of article 158 and subparagraph (xiv) of paragraph 2 of article 160.

Financial terms of contracts*

7. (c) In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the enterprises referred to in subparagraph (ii) of paragraph 2 of article 151 and in negotiating those terms within the framework of the provisions of Part XI of the present Convention, and of those rules, regulations and procedures, the Authority shall be guided by the following objectives:

(i) to ensure optimum revenues for the Authority;
(ii) to attract investments and technology into the exploitation and exploration of the Areas;
(iii) to ensure equality of financial treatment and comparable financial obligations on the part of all States and other entities which obtain contracts;
(iv) to provide incentives on a uniform and non-discriminatory basis for contractors to undertake joint arrangements with the Enterprise and developing countries or their nationals, and to stimulate the transfer of technology thereto;
(v) to enable the Enterprise to engage in such activities effectively from the time of entry into force of this Convention;

(b) A fee shall be levied in respect of the administrative cost of processing an application for a contract and shall be fixed by the Authority at an amount not exceeding ... per contract application.

(c) (i) The financial contribution of a Contractor shall be made up of an annual fixed charge to mine, a production charge and a share of net proceeds.
(ii) The Authority shall not establish any fees or charges to be applied to the Contractor other than those determined under (i) above, the fees referred to in subparagraph (b) above and the guarantee referred to in subparagraph (a) (2) (iii) of paragraph 11 of this annex.

(d) (i) An annual fixed charge to mine in respect of each year that the Contractor holds rights under the contract to commercial production from the contract area. The charge shall be based on the rate of ... per annum per contract area. No charge shall be payable for the first three years following the date of the entry into force of this Convention and thereafter the charge may be deducted from any production charge under (ii) below paid in the same year.
(ii) A production charge of ... per cent of the market value of ... per cent of the amount of the proceeds of production extracted from the contract area. For this purpose, the market value shall be the product of the quantity of the recoverable

* The text of paragraph 7 is a preliminary draft submitted after consultations with experts and further work needs to be done on this subject.
metals produced and the average price for that amount of metal during the relevant account period. When the Authority determines that an international commodity exchange provides a representative pricing mechanism, the average price on such exchange shall be used in the calculation of the price of each unit of production. In all other cases, the Authority, after consultation with the Contractor, shall determine the average price.

(iii) A share of net proceeds to be determined by deducting from the proceeds of operations in the area, the costs incurred by the Contractor in respect of those operations and applying a percentage to the balance according to the rate of return on investment to the Contractor as set out in subparagraph D below.

A. Proceeds of operations shall be assessed in terms of the value of production in the following manner... and shall include any proceeds from the disposal of capital assets not estimated from costs under B (1) below or, the market value of those capital assets at the relevant time which are no longer required for operations under the contract and which are not sold.

B. The costs incurred by the Contractor in respect of those operations shall comprise:

1. Development costs: that is all expenditures incurred prior to the commencement of commercial production from the contract area which are directly related to the development of the productive capacity of the contract area, including, inter alia, costs of machinery, equipment, ships, buildings, lead, roads, exploration and feasibility studies and other research and development construction, interest, required licenses, licenses, and, subsequent to the commencement of commercial production, similar costs required for the replacement of equipment and machinery, maintenance and improvement of productive capacity and improvement of performance; less proceeds from the disposal of capital assets;

2. Operating costs: that is all expenditures incurred in the operation of the productive capacity of the contract area, including, inter alia, expenditures for wages, salaries, employee benefits, supplies, materials, services, transportation, sales of products, interest, charges to mines and production charges paid under subparagraph (c) (i) and (ii) above, utilities, purchases, and overhead and administrative costs specifically related to the operations of the contract area and any net operating losses carried forward from prior accounting periods;

Provided that:

(a) Payments in respect of acquisition of assets referred to in 1 and 2 above shall not be allowed as costs to the extent that the acquisition was not the result of an arm's length transaction between the parties concerned;

(b) The costs referred to in 1 and 2 above in respect of interest paid by the Contractor may only be allowed if the debt-equity ratio of the project is reasonable in all the circumstances, and the rate of interest may be no greater than those approved by the Authority as reasonable having regard to existing commercial rates;

(c) The costs referred to in 1 and 2 above shall not be interpreted as including payments in respect of taxes or similar charges levied by States in respect of the operations of the contractor.

C. The net proceeds for a given accounting period shall be determined from the contract area by deducting from the proceeds of operations in that area the development costs and operating costs for that contract area, in accordance with the rules and regulations and in accordance with the following:

1. Operating costs for a given accounting period shall include any loss from the previous accounting period and shall be deductible in the accounting period in which they occur.

2. Development costs shall be deductible in the given accounting period as a depreciation charge on such percentage basis per annum as is agreed in the contract, provided that any such agreement must provide an opportunity for the Contractor to recover initial development costs i.e. development costs as at the commencement of commercial production within... years from the start of commercial production.

D. 1. In each year, the share of net proceeds to be received by the Authority shall be determined according to the rate of return on the Contractor's investment hereunder referred to as the rate of return. The rate of return shall be calculated by dividing the sum of the Contractor's portions of net proceeds in all preceding years by the total number of completed years from the date of commencement of commercial production, and expressing this average as a percentage of adjusted development costs. Adjusted development costs shall be equal to actual development costs less the sum of all amounts deducted by the Contractor as development costs up to the end of the year in question.

2. If for any year, the rate of return thus determined is zero or negative, the Contractor's rate of return shall be "minimal". If the rate of return is greater than zero but less than 10 per cent, the Contractor's rate of return shall be "low". If the rate of return is 10 per cent or more, but less than 20 per cent, the status shall be "medium". If the rate of return is 20 per cent or more, the status shall be "high".

3. (a) Where the status is "minimal", the Authority shall not be entitled to any payment under this paragraph;

(b) Where the status is "low", the Authority shall be entitled to...

(c) Where the status is "medium", the Authority shall be entitled to...

(d) Where the status is "high", the Authority shall be entitled to...

(iv) A. Where both parties agree, the Authority may elect to receive as its share of the net proceeds, a share of the deemed profits of the Contractor instead of a share of the net proceeds calculated under the method set out in subparagraph (d) (iii) above.

B. For the purposes of A above, the deemed profits of the Contractor in any one year
shall be ... per cent of the imputed value of assessed metal content of nodules mined from the contract area in that year.

C. For the purpose of B above, the imputed value of the metal content shall be ... per cent of the market value of the processed metal, such market value being calculated in accordance with subparagraph (d) (ii) above, and the assessed metal content shall be determined in a manner to be agreed between the parties.

D. The share of the deemed profits of the Contractor in any one year to be paid to the Authority shall be ... per cent of those deemed profits.

(e) The Authority may, taking into account any recommendations of the Economic Planning Commission and the Technical Commission, adopt rules and regulations that provide for incentives to Contractors that may be applied on a uniform and non-discriminatory basis in cases where such incentives would further the objectives set out in subparagraph (a) above. Such incentives may include reducing or eliminating the fixed charge or the production charge, or both of them, or reducing its percentage of net proceeds, or stimulating accelerated depreciation of development costs.

(f) (i) The amounts referred to in subparagraph (b) and subparagraph (d) (i) above shall be in constant 1st January 1980 U.S. dollars.

(ii) The payments to the Authority under (ii) (iii) and (iv) of subparagraph (d) above may be made either in a currency agreed upon between the Authority and the Contractor, or in the equivalents of processed metals at current market value. The market value shall be ascertained in accordance with (ii) of subparagraph (d) above.

(g) The Authority shall adopt rules and regulations regarding the method of selection of auditors responsible for attesting to the conformity of the Contractor with these related financial terms and the related rules and procedures of the Authority.

Transfer of Data

8. The Contractor shall transfer in accordance with the rules and regulations and the terms and conditions of the contract to the Authority at time intervals determined by the Authority all data which are both necessary and relevant to the effective implementation of the powers and functions of the organs of the Authority in respect of the contract area. Data transferred in respect of the contract area, deemed to be proprietary, shall not be disclosed by the Authority, and may only be used for the purposes set forth above in this subparagraph. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety shall not be deemed to be proprietary. Except as otherwise agreed between the Authority and the Contractor, the Contractor shall not be obliged to disclose proprietary equipment design data.

Training Programmes

9. The Contractor shall develop practical programmes for the training of personnel of the Authority and developing countries, including the participation of such personnel in all activities covered by the contract.

Exclusive Right to Explore and Exploit in the Contract Area

10. The Authority shall, pursuant to Part XI of the present Convention and the rules and regulations prescribed by the Authority, accord the Contractor the exclusive right to explore and exploit the contract area with the Authority in respect of a specified category of minerals and shall ensure that no other entity operates in the same contract area for a different category of minerals in a manner which might interfere with the operations of the Contractor. The Authority shall not, during the continuance of a contract, permit any other entity to carry out activities in the same area for the same category of minerals. The Contractor shall have security of tenure in accordance with paragraph 6 of article 151.

Rules, Regulations and Procedures

11. (a) The Authority shall adopt and uniformly apply rules, regulations and procedures for the implementation of Part XI of the present Convention, including these basic conditions, on the following matters:

(1) Administrative procedures relating to prospecting, exploration and exploitation in the Area

(ii) Operations

(i) Site of area;

(ii) Duration of activities;

(iii) Performance requirements and guarantees;

(iv) Categories of minerals;

(v) Renunciation of areas;

(vi) Progress reports;

(vii) Submission of data;

(viii) Inspection and supervision of operations;

(ix) Fencing of title pursuant to paragraph 1;

(x) Prevention of interference with other uses of the sea and of the marine environment;

(xi) Transfer of rights by a Contractor;

(xii) Procedures for transfer of technology to developing countries and for their direct participation;

(xiii) Mining standards and practices including those relating to operational safety, conservation of the resources and the protection of the marine environment;

(xiv) Continuity of operations in the event of disputes;

(xv) Definition of commercial production.

(2) Financial matters

(i) Establishment of uniform and non-discriminatory costing and accounting rules;

(ii) Apportionment of proceeds of operations;

(iii) The incentives referred to in paragraph 7;

(iv) Rules, regulations and procedures to implement decisions of the Council taken in pursuance of Articles 150 and 152;

(v) Regulations on the following items shall fully reflect the objective criteria set out below:

(1) Size of area

The Authority shall determine the appropriate size of areas for exploitation which may be up to twice as large as those for exploration in order to permit intensive exploration operations. Areas for exploitation shall be calculated to satisfy stated production requirements over the term of the contract taking into account the state of the art of technology then available for ocean mining and the relevant physical characteristics of the area. Areas shall neither be smaller nor larger than are necessary to satisfy this objective. In cases where the Contractor has obtained a contract for exploitation, the area not covered by each contract shall be relinquished to the Authority.

(2) Duration of activities

(i) Prospecting shall be without time-limit;

(ii) Exploration should be of sufficient duration as to permit a thorough survey of the specific area, the design and construction of mining equipment for the area, the design and construction of small and medium-size processing plants for the purpose of testing mining and processing systems;

(iii) The duration of exploitation should be related to the economic life of the mining project, taking into consideration such factors as the depletion of
Penalties

12. (e) A Contractor's rights under the contract concern may be suspended or terminated only in the following cases:

(i) If the Contractor has conducted its activities in such a way as to result in gross and persistent or serious, persistent and wilful violations of the fundamental terms of the contract, Part XI of the present Convention and rules and regulations, which were not caused by circumstances beyond his control; or

(ii) If a Contractor has failed to comply with a final binding decision of the dispute settlement body applicable to him.

(k) The Authority may impose upon the Contractor monetary penalties proportionates to the seriousness of the violation in lieu of suspension or termination or in any case not covered under subparagraph (e) above.

(c) Except in cases of emergency orders as provided for in subparagraph (a) of paragraph of Article 163, the Authority may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust his judicial remedies in the Sea-Bed Dispute Chamber. The Sea-Bed Dispute Chamber may, however, order execution of a decision regarding monetary penalties or suspension pending final adjudication of the matter.

Revision of Contract

13. (a) When circumstances have arisen, or are likely to arise, which, in the opinion of either party, would render the contract inequitable or unfair, it is impossible to achieve the objectives set out in the contract or in Part XI of the present Convention, the parties shall enter into negotiations to adjust it to new circumstances in the manner prescribed in the contract.

(b) Any contract entered into in accordance with paragraph 3 of Article 131, may only be revised if the parties involved have given their consent.

Transfer of Rights

14. The rights and obligations arising out of a contract shall be transferred only with the consent of the Authority, and in accordance with the rules and regulations adopted by it. The Authority shall not withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant, and assumes all of the obligations of the transferor.

Applicable Law

15. The law applicable to the contract shall be the provisions of Part XI of the present Convention, the rules and regulations prescribed by the Authority and the terms and conditions of the contract. The rights and obligations of the Authority and of the Contractor shall be valid and enforceable in the territory of each State Party. No State Party may impose conditions on a Contractor that are inconsistent with Part XI of the present Convention. However, the application by a State Party of environmental regulations to sea-bed miners it sponsors or to ships flying its flag, more stringent than those imposed by the Authority pursuant to subparagraph (b) (6) of paragraph 11 of this annex, shall not be deemed inconsistent with Part XI of the present Convention.

Liability

16. Any responsibility or liability of wrongfull damages arising out of the conduct of operations by the Contractor shall lie with the Contractor. It shall be a defence in any proceeding against a Contractor that the damage was the result of an act or omission of the Authority. Similarly, any responsibility or liability for wrongfull damages arising out of the exercise of the powers and functions of the Authority shall lie with the Authority. It shall be a defence in any proceeding against the Authority that the damage was a result of an act or omission of the Contractor. Liability in every case shall be for the actual amount of damage.