

*Extract from:*

# UNITED NATIONS JURIDICAL YEARBOOK

1996

Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter IV. Treaties concerning international law concluded under the auspices of the United Nations and related intergovernmental organizations



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### TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND REALTED INTERGOVERNMENTAL ORGANIZATIONS

#### A. Treaties concerning international law concluded under the auspices of the United Nations

##### 1. EUROPEAN AGREEMENT ON MAIN INLAND WATERWAYS OF INTERNATIONAL IMPORTANCE.<sup>1</sup> DONE AT GENEVA ON 19 JANUARY 1996<sup>2</sup>

European Agreement on Main Island Waterways of International Importance (AGN)

*The Contracting Parties,*

*Conscious* of the need to facilitate and develop international transport by inland waterways in Europe,

*Aware* of the expected increase in the international transport of goods as a result of growing international trade,

*Emphasizing* the important role of inland water transport, which in comparison with other modes of inland transport has economic and ecological advantages and offers spare infrastructure and vessel capacity and is therefore capable of lowering social costs and negative impacts on the environment by inland transport as a whole,

*Convinced* that, in order to make international inland water transport in Europe more efficient and attractive to customers, it is essential to establish a legal framework which lays down a coordinated plan for the development and construction of a network of inland waterways of international importance, based on agreed infrastructure and operational parameters,

*Have agreed* as follows:

#### *Article 1*

##### DESIGNATION OF THE NETWORK

The Contracting Parties adopt the provisions of this Agreement as a coordinated plan for the development and construction of a network of inland waterways, hereinafter referred to as the "network of inland waterways of international importance" or "E waterway network", which they intend to undertake within the framework of their relevant programmes. The E waterway network consists of inland waterways and ports of international importance as described in annexes I and II to this Agreement.

## *Article 2*

### TECHNICAL AND OPERATIONAL CHARACTERISTICS OF THE NETWORK

The network of inland waterways of international importance referred to in article 1 shall conform to the characteristics set out in annex III to this Agreement or will be brought into conformity with the provisions of this annex in future improvement work.

## *Article 3*

### ANNEXES

The annexes to this Agreement form an integral part of the Agreement.

## *Article 4*

### DESIGNATION OF THE DEPOSITARY

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

## *Article 5*

### SIGNATURE

1. This Agreement shall be open at the Office of the United Nations in Geneva for signature by States which are members of the United Nations Economic Commission for Europe or have been admitted to the Commission in a consultative capacity in conformity with paragraphs 8 and 11 of the Terms of Reference of the Commission, from 1 October 1996 to 30 September 1997.

2. Such signatures shall be subject to ratification, acceptance or approval.

## *Article 6*

### RATIFICATION, ACCEPTANCE OR APPROVAL

1. This Agreement shall be subject to ratification, acceptance or approval in accordance with paragraph 2 of article 5.

2. Ratification, acceptance or approval shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

## *Article 7*

### ACCESSION

1. This Agreement shall be open for accession by any State referred to in paragraph 1 of article 5 from 1 October 1996 onwards.

2. Accessions shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

### *Article 8*

#### ENTRY INTO FORCE

1. This Agreement shall enter into force 90 days after the date on which the Governments of five States have deposited an instrument of ratification, acceptance, approval or accession, provided that one or more waterways of the network of inland waterways of international importance link, in a continuous manner, the territories of at least three of the States which have deposited such an instrument.

2. If this condition is not fulfilled, the Agreement shall enter into force 90 days after the date of the deposit of the instrument of ratification, acceptance, approval or accession, whereby the said condition will be satisfied.

3. For each State which deposits an instrument of ratification, acceptance, approval or accession after the commencement of the period of 90 days specified in paragraphs 1 and 2 of this article, the Agreement shall enter into force 90 days after the date of the deposit of the said instrument.

### *Article 9*

#### LIMITS TO THE APPLICATION OF THE AGREEMENT

1. Nothing in this Agreement shall be construed as preventing a Contracting Party from taking such action, compatible with the provisions of the Charter of the United Nations and limited to the exigencies of the situation, as it considers necessary for its external or internal security.

2. Such measures, which must be temporary, shall be notified immediately to the depositary and their nature specified.

### *Article 10*

#### SETTLEMENT OF DISPUTES

1. Any dispute between two or more Contracting Parties which relates to the interpretation or application of this Agreement and which the Parties in dispute are unable to settle by negotiation or other means shall be referred to arbitration if any of the Contracting Parties in dispute so requests and shall, to that end, be submitted to one or more arbitrators selected by mutual agreement between the Parties in dispute. If the Parties in dispute fail to agree on the choice of an arbitrator or arbitrators within three months after the request for arbitration, any of those Parties may request the Secretary-General of the United Nations to appoint a single arbitrator to whom the dispute shall be submitted for decision.

2. The award of the arbitrator or arbitrators appointed in accordance with paragraph 1 of this article shall be binding upon the Contracting Parties in dispute.

## *Article 11*

### RESERVATIONS

Any State may, at the time of signing this Agreement or of depositing its instrument of ratification, acceptance, approval or accession, declare that it does not consider itself bound by article 10 of this Agreement.

## *Article 12*

### AMENDMENT OF THE AGREEMENT

1. This Agreement may be amended in accordance with the procedure specified in this article, except as provided for under articles 13 and 14.

2. At the request of a Contracting Party, any amendment proposed by it to this Agreement shall be considered by the Principal Working Party on Inland Water Transport of the United Nations Economic Commission for Europe.

3. If the proposed amendment is adopted by a two-thirds majority of the Contracting Parties present and voting, it shall be communicated by the Secretary-General of the United Nations to all Contracting Parties for acceptance.

4. Any proposed amendment communicated in accordance with paragraph 3 of this article shall come into force with respect to all Contracting Parties 3 months after the expiry of a period of 12 months following the date of its communication, provided that during such period of 12 months no objection to the proposed amendment shall have been notified to the Secretary-General of the United Nations by a State which is a Contracting Party.

5. If an objection to the proposed amendment has been notified in accordance with paragraph 4 of this article, the amendment shall be deemed not to have been accepted and shall have no effect whatsoever.

## *Article 13*

### AMENDMENT OF ANNEXES I AND II

1. Annexes I and II to this Agreement may be amended in accordance with the procedure laid down in this article.

2. At the request of a Contracting Party, any amendment proposed by it to annexes I and II to this Agreement shall be considered by the Principal Working Party on Inland Water Transport of the United Nations Economic Commission for Europe.

3. If the proposed amendment is adopted by the majority of the Contracting Parties present and voting, it shall be communicated by the Secretary-General of the United Nations to the Contracting Parties directly concerned for acceptance. For the purpose of this article, a Contracting Party shall be consid-

ered directly concerned if, in the case of inclusion of a new inland waterway or port of international importance or in case of their respective modification, its territory is crossed by that inland waterway or if the considered port is situated on the said territory.

4. Any proposed amendment communicated in accordance with paragraphs 2 and 3 of this article shall be deemed accepted if, within a period of six months following the date of its communication by the depositary, none of the Contracting Parties directly concerned has notified the Secretary-General of the United Nations of its objection to the proposed amendment.

5. Any amendment thus accepted shall be communicated by the Secretary-General of the United Nations to all Contracting Parties and shall enter into force three months after the date of its communication by the depositary.

6. If an objection to the proposed amendment has been notified in accordance with paragraph 4 of this article, the amendment shall be deemed not to have been accepted and shall have no effect whatsoever.

7. The depositary shall be kept promptly informed by the secretariat of the Economic Commission for Europe of the Contracting Parties which are directly concerned by a proposed amendment.

### *Article 14*

#### AMENDMENT OF ANNEX III

1. Annex III to this Agreement may be amended in accordance with the procedure specified in this article.

2. At the request of a Contracting Party, any amendment proposed by it to annex III to this Agreement shall be considered by the Principal Working Party on Inland Water Transport of the United Nations Economic Commission for Europe.

3. If the proposed amendment is adopted by the majority of the Contracting Parties present and voting, it shall be communicated by the Secretary-General of the United Nations to all Contracting Parties for acceptance.

4. Any proposed amendment communicated in accordance with paragraph 3 of this article shall be deemed accepted unless, within a period of six months following the date of its communication, one fifth or more of the Contracting Parties have notified the Secretary-General of the United Nations of their objection to the proposed amendment.

5. Any amendment accepted in accordance with paragraph 4 of this article shall be communicated by the Secretary-General of the United Nations to all Contracting Parties and shall enter into force three months after the date of its communication with regard to all Contracting Parties except those which have already notified the Secretary-General of the United Nations of their objection to the proposed amendment within a period of six months following the date of its communication according to paragraph 4 of this article.



6. If one fifth or more of the Contracting Parties have notified an objection to the proposed amendment in accordance with paragraph 4 of this article, *the amendment shall be deemed not to have been accepted and shall have no effect whatsoever.*

### *Article 15*

#### DENUNCIATION

1. Any Contracting Party may denounce this Agreement by written notification addressed to the Secretary-General of the United Nations.

2. The denunciation shall take effect one year after the date of receipt by the Secretary-General of the said notification.

### *Article 16*

#### TERMINATION

If, after the entry into force of this Agreement, the number of Contracting Parties for any period of 12 consecutive months is reduced to less than five, the Agreement shall cease to have effect 12 months after the date on which the fifth State ceased to be a Contracting Party.

### *Article 17*

#### NOTIFICATIONS AND COMMUNICATIONS BY THE DEPOSITARY

In addition to such notifications and communications as this Agreement may specify, the functions of the Secretary-General of the United Nations as depositary shall be as set out in Part VII of the Vienna Convention on the Law of Treaties, concluded on 23 May 1969.

### *Article 18*

#### AUTHENTIC TEXTS

The original of this Agreement, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Agreement.

DONE at Geneva on the nineteenth day of January 1996.

2. **PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF MINES, BOOBY-TRAPS AND OTHER DEVICES AS AMENDED ON 3 MAY 1996 (PROTOCOL II AS AMENDED ON 3 MAY 1996) ANNEXED TO THE CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS.<sup>3</sup> DONE AT GENEVA, 3 MAY 1996.<sup>4</sup>**

### *Article I*

#### AMENDED PROTOCOL

The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects ("the Convention") is hereby amended. The text of the Protocol as amended shall read as follows:

#### **"Protocol on Prohibitions or Restrictions on the Use of Mine, Booby-Traps and Other Devices as Amended on 3 May 1996 (Protocol II as amended as 3 May 1996)"**

### *Article 1*

#### SCOPE OF APPLICATION

1. This Protocol relates to the use on land of the mines, booby-traps and other devices, defined herein, including mines laid to interdict beaches, waterway crossings or river crossings, but does not apply to the use of anti-ship mines at sea or in inland waterways.

2. This Protocol shall apply in, in addition to situations referred to in article 1 of this Convention, to situations referred to in article 3 common to the Geneva Conventions of 12 August 1949. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

3. In case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply the prohibitions and restrictions of this Protocol.

4. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

5. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

6. The application of the provisions of this Protocol to parties to a conflict, which are not High Contracting Parties that have accepted this Protocol, shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.

## *Article 2*

### DEFINITIONS

For the purpose of this Protocol:

1. "Mine" means a munition placed under, on or near the ground or other surface area and designed to be exploded by the presence, proximity or contact of a person or vehicle.

2. "Remotely delivered mine" means a mine not directly emplaced but delivered by artillery, missile, rocket, mortar or similar means, or dropped from an aircraft. Mines delivered from a land-based system from less than 500 metres are not considered to be "remotely delivered", provided that they are used in accordance with article 5 and other relevant Articles of this Protocol.

3. "Anti-personnel mine" means a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.

4. "Booby-trap" means any device or material which is designed, constructed, or adapted to kill or injure, and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act.

5. "Other devices" means manually emplaced munitions and devices including improvised explosive devices designed to kill, injure or damage and which are actuated manually, by remote control or automatically after a lapse of time.

6. "Military object" means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

7. "Civilian objects" are all objects which are not military objectives as defined in paragraph 6 of this article.

8. "Minefield" is a defined area in which mines have been emplaced and "mined area" is an area which is dangerous due to the presence of mines. "Phoney minefield" includes phoney minefields.

9. "Recording" means a physical, administrative and technical operation designed to obtain, for the purpose of registration in official records, all available information facilitating the location of minefields, mined areas, mines, booby-traps and other devices.

10. "Self-destruction mechanism" means an incorporated or externally attached automatically functioning mechanism which secures the destruction of the munition into which it is incorporated or externally attached automatically functioning mechanism which secures the destruction of the munition into which it is incorporated or to which it is attached.

11. "Self-neutralization" means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example, a battery, that is essential to the operation of the munition.

12. "Self-deactivating" means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example, a battery, that is essential to the operation of the munition

13. "Remote control" means control by commands from a distance.

14. "Anti-handling device" means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with the mine.

15. "Transfer" involves, in addition to the physical movement of mines into or from national territory, the transfer of title to an control over the mines, but does not involve the transfer of territory containing emplaced mines.

### *Article 3*

#### GENERAL RESTRICTIONS ON THE USE OF MINES, BOOBY-TRAPS AND OTHER DEVICES

1. This article applies to:

- (a) Mines
- (b) Booby-traps; and
- (c) Other devices.

2. Each High Contracting Party or party to a conflict is, in accordance with the provisions of this Protocol, responsible for all mines, booby-traps and other devices employed by it and undertakes to clear, remove, destroy or maintain them as specified in article 10 of this Protocol.

3. It is prohibited in all circumstances to use any mine, booby-trap or other device which is designed or of a nature to cause superfluous injury or unnecessary suffering.

4. Weapons to which this article applies shall strictly comply with the standards and limitations specified in the Technical Annex with respect to each particular category.

5. It is prohibited to use mines, booby-traps or other devices which employ a mechanism or device specifically designed to detonate the munition by the presence of commonly available mine detectors as a result of their magnetic or other non-contact influence during normal use in detection operations.

6. It is prohibited to use a self-deactivating mine equipped with an anti-handling device that is designed in such a manner that the anti-handling device is capable of functioning after the mine has ceased to be capable of functioning.

7. It is prohibited in all circumstances to direct weapons to which this Article applies, either in offence, defence or by way of reprisals, against the civilian population as such or against individual civilians or civilian objects.

8. The indiscriminate use of weapons to which this article applies is prohibited. Indiscriminate use is any placement of such weapons:

(a) Which is not on, or directed against, a military object. In case of doubt as to whether an object which is normally dedicated to civilian purposes, such

as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used;

(b) Which employs a method or means of delivery which cannot be directed at a specific military objective; or

(c) Which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

9. Several clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are not to be treated as a single military objective.

10. All feasible precautions shall be taken to protect civilians from the effects of weapons to which this article applies. Feasible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations. These circumstances include, but are not limited to:

(a) The short- and long-term effect of mines upon the local civilian population for the duration of the minefield;

(b) Possible measures to protect civilians (for example, fencing, signs, warning and monitoring);

(c) The availability and feasibility of using alternatives; and

(d) The short- and long-term military requirements for a minefield.

11. Effective advance warning shall be given of any emplacement of mines, booby-traps and other devices which may affect the civilian population, unless circumstances do not permit.

#### *Article 4*

##### RESTRICTIONS ON THE USE OF ANTI-PERSONNEL MINES

It is prohibited to use anti-personnel mines which are not detectable, as specified in paragraph 2 of the Technical Annex.

#### *Article 5*

##### RESTRICTIONS ON THE USE OF ANTI-PERSONNEL MINES OTHER THAN REMOTELY DELIVERED MINES

1. This article applies to anti-personnel mines other than remotely delivered mines.

2. It is prohibited to use weapons to which this article applies which are not in compliance with the provisions on self-destruction and self-deactivation in the Technical Annex, unless:

(a) Such weapons are placed within a perimeter-marked area which is monitored by military personnel and protected by fencing or other means, to ensure the effective exclusion of civilians from the area. The marking must be

of a distinct and durable character and must at least be visible to a person who is about to enter the perimeter-marked area; and

(b) Such weapons are cleared before the area is abandoned, unless the area is turned over to the forces of another State which accept responsibility for the maintenance of the protections required by this article and the subsequent clearance of those weapons.

3. A party to a conflict is relieved from further compliance with the provisions of subparagraphs 2 (a) and 2(b) of this article only if such compliance is not feasible due to forcible loss of control of the area as a result of enemy military action, including situations where direct enemy military action makes it impossible to comply. If that party regains control of the area, it shall resume compliance with the provisions of subparagraphs 2 (a) and 2 (b) of this article.

4. If the forces of a party to a conflict gain control of an area in which weapons to which this article applies have been laid, such forces shall, to the maximum extent feasible, maintain and, if necessary, establish the protections required by this article until such weapons have been cleared.

5. All feasible measures shall be taken to prevent the unauthorized removal, defacement, destruction or concealment of any device, system or material used to establish the perimeter of a perimeter-marked area.

6. Weapons to which this article applies which propel fragments in a horizontal arc of less than 90 degrees and which are placed on or above the ground may be used without the measures provided for in subparagraph 2 (a) of this article for a maximum period of 72 hours, if:

(a) They are located in immediate proximity to the military unit that emplaced them; and

(b) The area is monitored by military personnel to ensure the effective exclusion of civilians.

## *Article 6*

### RESTRICTIONS ON THE USE OF REMOTELY DELIVERED MINES

1. It is prohibited to use remotely delivered mines unless they are recorded in accordance with subparagraph 1 (b) of the Technical Annex.

2. It is prohibited to use remotely delivered anti-personnel mines which are not in compliance with the provisions on self-destruction and self-deactivation in the Technical Annex.

3. It is prohibited to use remotely delivered mines other than anti-personnel mines, unless, to the extent feasible, they are equipped with an effective self-destruction or self-neutralization mechanism and have a back-up self-deactivation feature, which is designed so that the mine will no longer function as a mine when the mine no longer serves the military purpose for which it was placed in position.

4. Effective advance warning shall be given of any delivery or dropping of remotely delivered mines which may affect the civilian population, unless circumstances do not permit.

## Article 7

### PROHIBITIONS ON THE USE OF BOOBY-TRAPS AND OTHER DEVICES

1. Without prejudice to the rules of international law applicable in armed conflict relating to treachery and perfidy, it is prohibited in all circumstances to use booby-traps and other devices which are in any way attached to or associated with:

- (a) Internationally recognized protective emblems, signs or signals;
- (b) Sick, wounded or dead persons;
- (c) Burial or cremation sites or graves;
- (d) Medical facilities, medical equipment, medical supplies or medical transportation;
- (e) Children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing or education of children;
- (f) Food or drink;
- (g) Kitchen utensils or appliances except in military establishments, military locations or military supply depots;
- (h) Objects clearly of a religious nature;
- (i) Historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; or
- (j) Animals or their carcasses.

2. It is prohibited to use booby-traps or other devices in the form of apparently harmless portable objects which are specifically designed and constructed to contain explosive material.

3. Without prejudice to the provisions of article 3, it is prohibited to use weapons to which this article applies in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either:

- (a) They are placed on or in the close vicinity of a military objective; or
- (b) Measures are taken to protect civilians from their effects, for example, the posting of warning sentries, the issuing of warnings or the provision of fences.

## Article 8

### TRANSFER

1. In order to promote the purposes of this Protocol, each High Contracting Party:

- (a) Undertakes not to transfer any mine the use of which is prohibited by this Protocol;
- (b) Undertakes not to transfer any mine to any recipient other than a State or a State agency authorized to receive such transfers;

(c) Undertakes to exercise restraint in the transfer of any mine the use of which is restricted by Protocol. In particular, each High Contracting Party undertakes not to transfer any anti-personnel mines to States which are not bound by this Protocol, unless the recipient State agrees to apply this Protocol; and

(d) Undertakes to ensure that any transfer in accordance with this article takes place in full compliance, by both the transferring and the receipt State, with the relevant provisions of this Protocol and the applicable norms of international humanitarian law.

2. In the event that a High Contracting Party declares that it will defer compliance with specific provisions on the use of certain mines, as provided for in the Technical Annex, subparagraph 1 (a) of this article shall however apply to such mines.

3. All High Contracting Parties, pending the entry into force of this Protocol, will refrain from any actions which would be inconsistent with subparagraph 1 (a) of this article.

### *Article 9*

#### RECORDING AND USE OF INFORMATION ON MINEFIELDS, MINED AREAS, MINES, BOOBY-TRAPS AND OTHER DEVICES

1. All information concerning minefields, mined areas, mines, booby-traps and other devices shall be recorded in accordance with the provisions of the Technical Annex.

2. All such records shall be retained by the parties to a conflict, who shall, without delay after the cessation of active hostilities, take all necessary and appropriate measures, including the use of such information, to protect civilians from the effects of minefields, mined areas, mines, booby-traps and other devices in areas under their control.

At the same time, they shall also make available to the other party or parties to the conflict and to the Secretary-General of the United Nations all such information in their possession concerning minefields, mined areas, mines, booby-traps and other devices laid by them in areas no longer under their control; provide, however, subject to reciprocity, where the forces of a party to a conflict are in the territory of an adverse party, either party may withhold such information from the Secretary-General and the other party, to the extent that security interests require such withholding, until neither party is in the territory of the other. In the latter case, the information withheld shall be disclosed as soon as those security interests permit. Wherever possible, the parties to the conflict shall seek, by mutual agreement, to provide for the release of such information at the earliest possible time in a manner consistent with the security interests of each party.

3. This article is without prejudice to the provisions of article 10 and 12 of this Protocol.



## *Article 10*

### REMOVAL OF MINEFIELDS, MINED AREAS, MINES, BOOBY-TRAPS AND OTHER DEVICES AND INTERNATIONAL COOPERATION

1. Without delay after the cessation of active hostilities, all minefields, mined areas, mines, booby-traps and other devices shall be cleared, removed, destroyed or maintained in accordance with article 3 and paragraph 2 of article 5 of this Protocol.

2. High Contracting Parties and parties to a conflict bear such responsibility with respect to minefields, mined areas, mines, booby-traps and other devices in areas under this control.

3. With respect to minefields, mined areas, mines, booby-traps and other devices laid by a party in areas over which it no longer exercises control, such party shall provide to the party in control of the area pursuant to paragraph 2 of this article, to the extent permitted by such party, technical and material assistance necessary to fulfil such responsibility.

4. At all times necessary, the parties shall endeavour to reach agreement, both among themselves and, where appropriate, with other States and with international organizations, on the provision of technical and material assistance, including, in appropriate circumstances, the undertaking of joint operations necessary to fulfil such responsibilities.

## *Article 11*

### TECHNOLOGICAL COOPERATION AND ASSISTANCE

1. Each High Contracting Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning the implementation of this Protocol and means of mine clearance. In particular, High Contracting Parties shall not impose undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes.

2. Each High Contracting Party undertakes to provide information to the database on mine clearance established within the United Nations system, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance.

3. Each High Contracting Party in a position to do so shall provide assistance for mine clearance through the United Nations system, other international bodies or on a bilateral basis, or contribute to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance.

4. Requests by High Contracting Parties for assistance, substantiated by relevant information may be submitted to the United Nations, to other appropriate bodies or to other States. These requests may be submitted to the Secretary-General of the United Nations, who shall transmit them to all High Contracting Parties and to relevant international organizations.

5. In the case of requests to the United Nations, the Secretary-General of the United Nations, within the resources available to the Secretary-General of the United Nations, may take appropriate steps to assess the situation and, in cooperation with the requesting High Contracting Party, determine the appropriate provision of assistance in mine clearance or implementation of the Protocol. The Secretary-General may also report to High Contracting Parties on any such assessment as well as on the type and scope of assistance required.

6. Without prejudice to their constitutional and other legal provisions, the High Contracting Parties undertake to cooperate and transfer technology to facilitate the implementation of the relevant prohibitions and restrictions set out in this Protocol.

7. Each High Contracting Party has the right to seek and receive technical assistance, where appropriate, from another High Contracting Party on specific relevant technology, other than weapons technology, as necessary and feasible, with a view to reducing any period of deferral of which provision is made in the Technical Annex.

## *Article 12*

### **PROTECTION FROM THE EFFECTS OF MINEFIELDS, MINED AREAS, MINES, BOOBY-TRAPS AND OTHER DEVICES**

#### *1. Application*

(a) With the exception of the forces and missions referred to in subparagraph 2(a)(i) of this article, this article applies only to missions which are performing functions in an area with the consent of the High Contracting Party on whose territory the functions are performed.

(b) The application of the provisions of this article to parties to a conflict which are not High Contracting Parties shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.

(c) The provisions of this article are without prejudice to existing international humanitarian law, or other international instruments as applicable, or decisions by the Security Council of the United Nations, which provide for a higher level of protection to personnel functioning in accordance with this article.

#### *2. Peacekeeping and certain other forces and missions*

(a) This paragraph applies to:

- (i) Any United Nations force or mission performing peacekeeping observation or similar functions in any area in accordance with the Charter of the United Nations; and
- (ii) Any mission established pursuant to Chapter VIII of the Charter of the United Nations and performing its functions in the area of a conflict.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a force or mission to which this paragraph applies, shall:

- (i) So far as it is able, take such measures as are necessary to protect the force or mission from the effects of mines, booby-traps and other devices in any area under its control;
- (ii) If necessary in order effectively to protect such personnel, remove or render harmless, so far as it is able, all mines, booby-traps and other devices in that area; and
- (iii) Inform the head of the force or mission of the location of all known minefields, mined areas, mines, booby-traps and other devices in the area in which the force or mission is performing its functions and, so far as is feasible, make available to the head of the force or mission all information in its possession concerning such minefields, mined areas, mines, booby-traps and other devices.

### 3. *Humanitarian and fact-finding missions of the United Nations system*

(a) This paragraph applies to any humanitarian or fact-finding mission of the United Nations system.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall:

- (i) Provide the Personnel of the mission with the protections set out in subparagraph 2(b)(i) of this article; and
- (ii) If access to or through any place under its control is necessary for the performance of the mission's functions and in order to provide the personnel of the mission with safe passage to or through that place:
  - (aa) Unless ongoing hostilities prevent, inform the head of the mission of a safe route to that place if such information is available; or
  - (bb) If information identifying a safe route is not provided in accordance with subparagraph (aa), so far as is necessary and feasible, clear a lane through minefields.

### 4. *Missions of the International Committee of the Red Cross*

(a) This paragraph applies to any mission of the International Committee of the Red Cross performing functions with the consent of the host State or States as provided for by the Geneva Conventions of 12 August 1949 and, where applicable, their Additional Protocols.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall:

- (i) Provide the personnel of the mission with the protections set out in subparagraph 2(b)(i) of this article; and
- (ii) Take the measures set out in subparagraph 3(b)(ii) of this article.

### 5. *Other humanitarian missions and missions of enquiry*

(a) Insofar as paragraphs 2, 3 and 4 of this article do not apply to them, this paragraph applies to the following missions when they are performing functions in the area of a conflict or to assist the victims of a conflict:

- (i) Any humanitarian mission of a national Red Cross or Red Crescent society or of their International Federation;
  - (ii) Any mission of an impartial humanitarian organization, including any impartial humanitarian demining mission; and
  - (iii) Any mission of enquiry established pursuant to the provisions of the Geneva Conventions of 12 August 1949 and, where applicable, their Additional Protocols.
- (b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall, so far as is feasible;
- (i) Provide the personnel of the mission with the protections set out in subparagraph 2(b)(i) of this article; and
  - (ii) Take the measures set out in subparagraph 3(b)(ii) of this article.

## 6. *Confidentiality*

All information provided in confidence pursuant to this article shall be treated by the recipient in strict confidence and shall not be released outside the force or mission concerned without the express authorization of the provider of the information.

## 7. *Respect for laws and regulations*

Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, personnel participating in the forces and missions referred to in this article shall:

- (a) Respect the laws and regulations of the host State; and
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

# Article 13

## CONSULTATIONS OF HIGH CONTRACTING PARTIES

1. The High Contracting Parties undertake to consult and cooperate with each other on all issues related to the operation of this Protocol. For this purpose, a conference of High Contracting Parties shall be held annually.

2. Participation in the annual conferences shall be determined by their agreed Rules of Procedure.

3. The work of the conference shall include:

- (a) Review of the operation and status of this Protocol;
- (b) Consideration of matters arising from reports by High Contracting Parties according to paragraph 4 of this article;
- (c) Preparation for review conferences; and
- (d) Consideration of the development of technologies to protect civilians against indiscriminate effects of mines.

4. The High Contracting Parties shall provide annual reports to the Depositary, who shall circulate them to all High Contracting Parties in advance of the conference, on any of the following matters:

- (a) Dissemination of information on this Protocol to their armed forces and to the civilian population;
- (b) Mine clearance and rehabilitation programmes;
- (c) Steps taken to meet technical requirements of this Protocol and any other relevant information pertaining thereto;
- (d) Legislation related to this Protocol;
- (e) Measures taken on international technical information exchange, on international cooperation on mine clearance, and on technical cooperation and assistance; and
- (f) Other relevant matters.

5. The cost of the Conference of High Contracting Parties shall be borne by the High Contracting Parties and States not parties participating in the work of the conference, in accordance with the United Nations scale of assessment adjusted appropriately.

## *Article 14*

### COMPLIANCE

1. Each High Contracting Party shall take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this Protocol by persons or on territory under its jurisdiction or control.

2. The measures envisaged in paragraph 1 of this article include appropriate measures to ensure the imposition of penal sanctions against persons who, in relation to an armed conflict and contrary to the provisions of this Protocol, willfully kill or cause serious injury to civilians and to bring such persons to justice.

3. Each High Contracting Party shall also require that its armed forces issue relevant military instructions and operating procedures and that armed forces personnel receive training commensurate with their duties and responsibilities to comply with the provisions of this Protocol.

4. The High Contracting Parties undertake to consult each other and to cooperate with each other bilaterally, through the Secretary-General of the United Nations or through other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Protocol.

### TECHNICAL ANNEX

#### *1. Recording*

(a) Recording of the location of mines other than remotely-delivered mines, minefields, mined areas, booby-traps and other devices shall be carried out in accordance with the following provisions:

- (i) The location of the minefields, mined areas and areas and areas of booby-traps and other devices shall be specified accurately by relation to the coordinates of at least two reference points and the estimated dimensions of the area containing these weapons in relation to those reference points;

- (ii) Maps, diagrams or other records shall be made in such a way as to indicate the location of minefields, mined areas, booby-traps and other devices in relation to reference points, and these records shall also indicate their perimeters and extent; and
  - (iii) For purposes of detection and clearance of mines, booby-traps and other devices, maps, diagrams or other records shall contain complete information on the type, number, emplacing method, type of fuse and life time, date and time of laying, anti-handling devices (if any) and other relevant information on all these weapons laid. Whenever feasible the minefield record shall show the exact location of every mine, except in row minefields where the row location is sufficient. The precise location and operating mechanism of each booby-trap laid shall be individually recorded.
- (b) The estimated location and area of remotely-delivered mines shall be specified by coordinates of reference points (normally corner points) and shall be ascertained and when feasible marked on the ground at the earliest opportunity. The total number and type of mines laid, the date and time of laying and the self-destruction time periods shall also be recorded.
- (c) Copies of records shall be held at a level of command sufficient to guarantee their safety as far as possible.
- (d) The use of mines produced after the entry into force of this Protocol is prohibited unless they are marked in English or in the respective national language or languages with the following information:
- (i) Name of the country of origin;
  - (ii) Month and year of production; and
  - (iii) Serial number or lot number.

The markings should be visible, legible, durable and resistant to environmental effects, as far as possible.

## *2. Specifications on detectability*

(a) With respect to anti-personnel mines produced after 1 January 1997, such mines shall incorporate to their construction a material or device that enables the mine to be detected by commonly-available technical mine detection equipment and provides a response signal equivalent to a signal from 8 grammes or more of iron in a single coherent mass.

(b) With respect to anti-personnel mines produced before 1 January 1997, such mines shall either incorporate in their construction, or have attached prior to their emplacement, in a manner not easily removable, a material or device that enables the mine to be detected by commonly-available technical mine detection equipment and provides a response signal equivalent to a signal from 8 grammes or more of iron in a single coherent mass.

(c) In the event that a High Contracting Party determines that it cannot immediately comply with sub-paragraph (b), it may declare at the time of its notification of consent to be bound by this Protocol that it will defer compliance with sub-paragraph (b) for a period not to exceed 9 years from the entry into force of this Protocol. In the meantime it shall, to the extent feasible, minimize the use of anti-personnel mines that do not so comply.

### 3. *Specification on self-destruction and self-deactivation*

(a) All remotely-delivered anti-personnel mines shall be designed and constructed so that no more than 10% of activated mines will fail to self-destruct within 30 days after emplacement, and each mine shall have a back-up self-deactivation feature designed and constructed so that, in combination with the self-destruction mechanism, no more than one in one thousand activated mines will function as a mine 120 days after emplacement.

(b) All non-remotely delivered anti-personnel mines, used outside marked areas, as defined in Article 5 of this Protocol, shall comply with the requirements for self-destruction and self-deactivation stated in sub-paragraph (a).

(c) In the event that a High Contracting Party determines that it cannot immediately comply with sub-paragraphs (a) and/or (b), it may declare at the time of its notification of consent to be bound by this Protocol, that it will, with respect to mines produced prior to the entry into force of this Protocol, defer compliance with sub-paragraphs (a) and/or (b) for a period not to exceed 9 years from the entry into force of this Protocol.

During this period of deferral, the High Contracting Party shall:

- (i) Undertake to minimize, to the extent feasible, the use of anti-personnel mines that do not so comply; and
- (ii) With respect to remotely-delivered anti-personnel mines, comply with either the requirements for self-destruction or the requirements for self-deactivation and, with respect to other anti-personnel mines comply with at least the requirements for self-deactivation.

### 4. *International signs for minefields and mined areas*

Signs similar to the example attached and as specified below shall be utilized in the marking of minefields and mined areas to ensure their visibility and recognition by the civilian population:

(a) Size and shape: a triangle or square no smaller than 28 centimetres (11 inches) by 20 centimetres (7.9 inches) for a triangle, and 15 centimetres (6 inches) per side for a square;

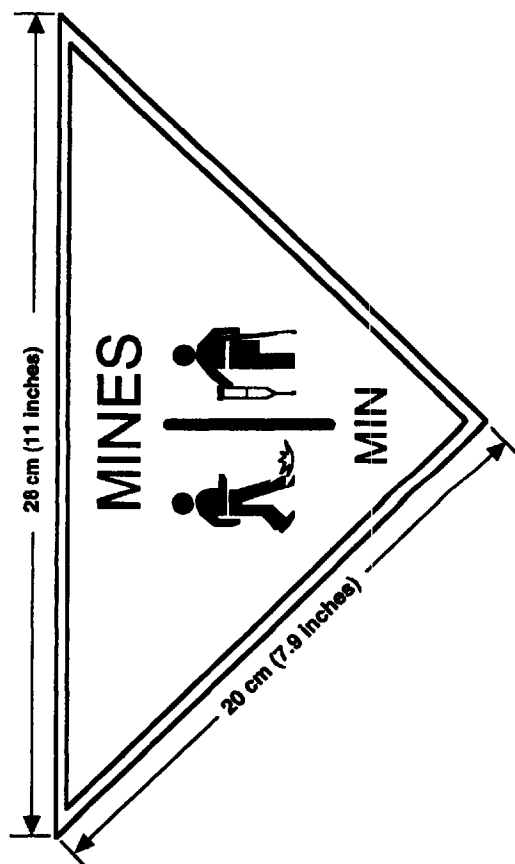
(b) Colour: red or orange with a yellow reflecting border;

(c) Symbol: the symbol illustrated in the Attachment, or an alternative readily recognizable in the area in which the sign is to be displayed as identifying a dangerous area;

(d) Language: the sign should contain the word "mines" in one of the six official languages of the Convention (Arabic, Chinese, English, French, Russian and Spanish) and the language or languages prevalent in that area; and

(e) Spacing: signs should be placed around the minefield or mined area at a distance sufficient to ensure their visibility at any point by a civilian approaching the area."

## Warning Sign for Areas Containing Mines





## Article 2

### ENTRY INTO FORCE

This amended Protocol shall enter into force as provided for in paragraph 1 (b) of article 8 of the Convention.

### 3. AGREEMENT ESTABLISHING THE BANK FOR ECONOMIC COOPERATION AND DEVELOPMENT IN THE MIDDLE EAST AND NORTH AFRICA.<sup>5</sup> DONE AT CASABLANCA ON 28 AUGUST 1996<sup>6</sup>

#### Agreement Establishing the Bank for Economic Cooperation and Development in the Middle East and North Africa

##### *The Contracting Parties,*

*Recognizing* that the establishment of a lasting, just a comprehensive peace in the Middle East opens the way to a better life for millions of people in the region who have been directly affected by violence for decades, and offers hope for a dramatic improvement in the economic, social and human development of the Middle East and North Africa;

*Aware* that the courageous political steps taken in the peace process must be supported by decisive actions in the areas of economic and social development;

*Convinced* that decisive actions to promote regional economic development, and to improve the living standards of the peoples of the region, are essential in order to consolidate peace; such actions would facilitate popular participation in economic cooperation for long-term development, thus leading the region toward a new era of cooperative interaction and prosperity;

*Considering* the need to improve economic cooperation and trade within the region as well as to enable the region to enhance its global economic competitiveness;

*Recognizing* that a permanent forum for economic dialogue and financial cooperation can be an important element contributing to lasting peace and prosperity within the region;

*Considering* the need to strengthen international cooperation for economic advancement in the region, to accelerate the contribution of foreign and domestic investment, and to improve the management of environmental resources;

*Desiring* to enhance the flow to the region of capital and technology for productive and peaceful purposes with a view promoting respect for human right;

*Wishing* also to support the development of regional projects, particularly for the creation of an infrastructure while at all times mindful of the need to protect the environment;

*Recognizing* the imperative of establishing a strong private sector as a basis for achieving economic growth, alleviating poverty and improving the overall standard of living in the region;

*Desiring* to create a partnership between the public and private sectors through cooperation in reducing barriers to the flow of goods, services and capital, and in harmonizing policies to achieve an enabling economic environment, including the maintenance of fair and stable standards for the treatment of foreign and domestic investment; and

*Convinced* that a Bank for Economic Cooperation and Development in the Middle East and North Africa can play an important role in achievement of these ideals;

*Have agreed as follows:*

## CHAPTER I

### Establishment, status and purposes

#### *Article 1*

#### ESTABLISHMENT AND STATUS OF THE BANK

The Bank for Economic Cooperation and Development in the Middle East and North Africa (hereinafter referred to as the “Bank”) is hereby established. It shall have full juridical personality and, in particular, the capacity to contract, to acquire and dispose of movable and immovable property, and to institute legal proceedings.

#### *Article 2*

#### PURPOSES

To further strengthen and enhance the fundamental objectives of peace, stability and development in the Middle East and North Africa, the purposes of the Bank shall be to:

(a) Mobilize official and private, foreign and domestic, investment and other resources to:

- (i) Support projects that have a regional character, or that would have a significant beneficial impact on the region, in particular, infrastructure projects;
- (ii) Support and stimulate the growth of the private sector in the region, and foster private and entrepreneurial initiative; and
- (iii) Further economic growth and equitable and sustainable development to raise income levels and standards of living and support social well-being and the reduction of poverty; and

(b) Provide a forum to promote economic cooperation and coordination in the region and assist the regional members to integrate their respective economies into the global economy.

### *Article 3*

#### COOPERATION WITH OTHER INTERNATIONAL ORGANIZATIONS

To achieve its purposes, the Bank shall work in close cooperation with all its members and, in such manner as it may deem appropriate within the terms of this Agreement, with any international organization, regional organization or other recognized organization, whether public or private, whose activities are consistent with the facilitation of economic development of, and investment in, the region.

### CHAPTER II

#### Membership and resources

### *Article 4*

#### MEMBERSHIP

(a) The original members are listed in Schedule A of this Agreement and are committed to:

- (i) Achieving a comprehensive peace in the Middle East and supporting the peace process begun at Madrid in October 1991; and
- (ii) Promoting economic cooperation within the region, including trade liberalization and the removal of trade barriers and restrictions, and integrating their respective economies with the global economy

but may be original members only if they become parties to this Agreement on or before 31 October 1997, or such later date as may be decided by the Board of Governors.

(b) The Board of Governors may decide by special majority to admit new members of the Bank which are committed to the principles set forth in subparagraphs (i) and (ii) of paragraph (a) of this article, and which may not or do not become original members in accordance with paragraph (a) of this Article.

### *Article 5*

#### CAPITAL

(a) The authorized capital stock of the Bank shall be three billion, three hundred and thirty-eight million, seven hundred thousand Special Drawing Rights. The capital stock shall be divided into thirty-three million, three hundred and eighty-seven thousand shares having a par value of one hundred Special Drawing Rights each. Each share shall have a paid-in portion of twenty-five percent and a callable portion of seventy-five percent.

(b) Each original member of the Bank shall subscribe at par to the number of shares of capital stock set forth opposite its name in Schedule A of this Agreement, and shall pay for the paid-in portion and the callable portion of such shares in accordance with that Schedule. Each new member shall subscribe to such number of shares of capital stock on such terms and conditions as may be determined by the Board of Governors, but in no event at a price of less than par. The Board of Governors may allocate to existing members shares which are not subscribed by the latest date for becoming an original member of the Bank pursuant to paragraph (a) of article 4.

(c) The Board of Governors shall at intervals of not more than five years review the capital stock of the Bank. The Board of Governors, by special majority, may at any time increase the capital stock of the Bank. In those circumstances, each member shall have pre-emptive rights, but no member shall be obliged to subscribe to any part of an increase of capital stock.

(d) Shares of stock shall not be pledged or encumbered in any manner whatsoever, and they shall not be transferable except to the Bank.

### *Article 6*

#### VOLUNTARY SPECIAL FUNDS RESOURCES

(a) To further its purposes, and mindful that concessional resources can accelerate the development of the weaker economies of regional members, the Bank may seek the voluntary contribution of Special Funds, and accept the administration of voluntarily contributed Special Funds, to be used in any manner and on any terms and conditions consistent with the agreement or agreements relating to such Funds. Agreements may provide that a Special Fund may be available for projects on a concessional or grant basis, and may be used to finance studies and consultancy services to promote economic cooperation in the region, to finance technical assistance for project preparation, to support project implementation, and to provide other assistance.

(b) The Special Funds resources of the Bank shall at all times and in all respects be held, used, committed, accounted for, and invested or otherwise disposed of entirely separately from ordinary resources. The full cost of administering any Special Fund shall be charged to that Special Fund. The ordinary resources of the Bank shall under no circumstances be charged with, or used to discharge, losses or liabilities arising out of activities for which Special Funds resources were originally used or committed.

### *Article 7*

#### VALUATION OF CURRENCIES

Whenever it shall be necessary for the purposes of this Agreement to determine the value of one currency in terms of another, such value shall be as reasonably determined by the Bank, after consultation with the International Monetary Fund.

## CHAPTER III

### Economic cooperation

#### *Article 8*

##### A FORUM FOR ECONOMIC COOPERATION

(a) The Bank shall have a Forum for Economic Cooperation (hereinafter referred to as the "Forum") composed of the regional members of the Bank.

(b) The purpose of the Forum shall be to enable and encourage regional members, by discussion and dialogue, and agreement where appropriate, to:

- (i) Promote the efficient use of the economic resources of the region, social well-being, and economic growth and internal and external financial stability in the region, and, in particular, facilitate economic cooperation within the region;
- (ii) Promote macroeconomic, sectoral and regulatory policies that create a conducive environment for entrepreneurial activity;
- (iii) Coordinate and recommend regional economic priorities; and
- (iv) Pursue efforts to increase and promote both intra-regional and external investment and trade in goods and services, and to promote trade and investment liberalization, inter alia, by promoting the free movement of goods, services, persons and capital in the region, and the harmonization of regulatory regimes.

(c) The regional members shall select a Chairperson from the region, and shall determine the operating rules and procedures of the Forum, which may permit periodic meetings, at the ministerial or expert level, and participation as appropriate of non-regional members in meetings of the Forum. With a view to achieving the purposes of the Forum, the regional members agree that they will:

- (i) Keep each other informed and furnish the Bank with the information necessary for the accomplishment of its tasks;
- (ii) Consult together at a policy level on a continuing basis, and carry out studies and participate in agreed projects;
- (iii) Cooperate closely with each other and where appropriate take coordinated action; and
- (iv) Cooperate with the non-regional members of the Bank as appropriate.

(d) The President of the Bank (hereinafter referred to as the "President") shall provide the Secretariat and logistical services for the operations and deliberations of the Forum. The Secretariat may provide the Forum at its request with economic analyses, coordinating as appropriate with other international institutions. The Secretariat shall be responsible for generally informing the Board of Directors and the Forum about each other's activities, with a view toward promoting Forum activities that will enhance the effectiveness of Bank operations.

(e) The Forum shall have no authority over other organs of the Bank.

## CHAPTER IV

### Financial operations

#### *Article 9*

##### BASIC PRINCIPLES FOR FINANCIAL OPERATIONS

- (a) The principal focus of the Bank, in its financial operations, shall be to:
  - (i) Support projects that have a regional character, or that would have a significant beneficial impact on the region, in particular, infrastructure projects; and
  - (ii) Support and stimulate the growth of the private sector in the region, including private sector local and regional projects, joint ventures, and small and medium-sized enterprises and foster private and entrepreneurial initiative.

(b) The Board of Directors shall assure implementation of these basic principles by periodically reviewing the Bank's portfolio, by providing guidance to the President, or by taking such other action as it deems appropriate.

#### *Article 10*

##### LOCATION OF FINANCIAL OPERATIONS

The Bank may conduct its financial operations in those regional members that:

- (a) Are committed to and encouraging the peace process in the region and observing the principles set forth in subparagraphs (i) and (ii) of paragraph (a) of article 4 of this Agreement; and
- (b) Are proceeding steadily to market-oriented economics and the promotion of private and entrepreneurial initiative.

#### *Article 11*

##### GENERAL AUTHORITIES

(a) To achieve the purposes of the Bank, and to implement the basic principles for its financial operations set forth in paragraph (a) of article 9 of this Agreement, the Board of Directors may authorize the Bank to exercise any or all of the following authorities, consistent with prudent financial management practices and the evolving needs of the region. The Bank may:

- (i) Make or participate in, or provide guarantees for, loans;
- (ii) Invest in the equity capital of enterprises; and/or
- (iii) Provide financial advice, training in economic, managerial, financial and legal issues, research, and other forms of technical assistance; in providing assistance to private sector enterprises, the Bank may help them in coordinating with investment promotion agencies and other financing facilities, and in overcoming obstacles to investment in the region.

- (b) The Bank may exercise its authorities to provide support:
  - (i) For any private sector enterprise in a member;
  - (ii) For the development of infrastructure, and other projects, with significant economic benefits for the region, with special emphasis on private sector participation; or
  - (iii) For any State-owned enterprise in a process of privatization provided that the enterprise operates autonomously without subsidies in a competitive market environment and is subject to bankruptcy laws.

## *Article 12*

### MOBILIZING OTHER CAPITAL RESOURCES

- (a) The Bank shall not undertake any financing, or provide any facilities, when the applicant is able to obtain sufficient financing or facilities from other sources on terms and conditions that the Bank considers reasonable.
- (b) To mobilize other private or official capital flows:
  - (i) The Bank shall assure that projects which it finances are also financed by multilateral institutions, commercial banks or other interested sources, except as determined by the Board of Directors; and
  - (ii) In its equity investments, the Bank shall not seek to obtain a controlling interest in the enterprise concerned and shall not exercise such control or assume direct responsibility for managing any enterprise in which it has an investment, except in the event of actual or threatened default on any of its investments, actual or threatened insolvency of the enterprise in which such investment shall have been made, or other situations which, in the opinion of the Bank, threaten to jeopardize any such investment.

## *Article 13*

### GENERAL LIMITS ON OPERATIONS

- (a) The total amount of outstanding loans, equity investments and guarantees made or issued by the Bank in its ordinary operations shall not be increased at any time, if by such increase the total amount of its unimpaired subscribed capital, reserves and surpluses included in its ordinary capital resources would be exceeded. The Board of Directors shall determine criteria and procedures for charging guarantees against this limit.
- (b) The Bank shall not issue guarantees for export credits. All loans made or guaranteed by the Bank, and all equity investment by the Bank, shall be for the purpose of specific projects. The Bank shall not engage in fast-disbursing policy-based lending.

## *Article 14*

### OTHER OPERATIONAL PRINCIPLES

(a) The Bank shall carry out its activities in accordance with sound banking and business policies and prudent financial management practices with a view to maintaining under all circumstances its ability to meet its financial obligations.

(b) In providing or guaranteeing financing, the Bank shall pay due regard to the prospect that the borrower and its guarantor, if any, will be in a position to meet their obligations under the financing contract.

(c) Before the Bank makes or issues a loan, guarantee or equity investment, the President shall have presented to the Board of Directors a written report regarding the proposal, together with recommendations, on the basis of a staff study. The Board of Directors shall decide on such proposals in accordance with the rules of procedure it adopts.

(d) Where the recipient of loans or guarantees of loans is not itself a member, but is an instrumentality of a member or members, the Bank may require the member or members concerned, or a public agency of such member or members acceptable to the Bank, to guarantee the repayment of the principal and the payment of interest and other fees and charges on the loan in accordance with the terms thereof.

## *Article 15*

### ENVIRONMENTAL MANDATE

The Bank shall promote in the full range of its activities environmentally sound and sustainable development and shall institute appropriate environmental assessment procedures.

## *Article 16*

### FINANCING IN MEMBER

The Bank shall not finance any undertaking within a member if that member objects to such financing.

## *Article 17*

### TERMS AND CONDITIONS OF FINANCIAL INSTRUMENTS

(a) The Bank shall determine the terms and conditions of each loan and guarantee contract, subject to such rules and regulations as the Board of Directors shall issue. In determining such terms and conditions, the Bank shall take fully into account the need to safeguard its income. The Bank shall not cover the total amount or loss of any guarantee loan.



(b) In its investments in individual enterprises, the Bank shall undertake its financing on terms and conditions that it considers appropriate, taking into account the requirements of the enterprise, the risks being undertaken by the Bank, and the terms and conditions normally obtained by private investors for similar financing.

## *Article 18*

### DISBURSEMENT OF LOANS, PROCUREMENT AND FOLLOW-UP

(a) In case of a direct loan made by the Bank, the borrower shall be permitted by the Bank to draw its funds only to meet expenditures as they are actually incurred.

(b) In its financial operations, the Bank shall place no restriction upon the procurement of goods and services from any member, and shall, in all appropriate cases, make its loans and other operations conditional on international invitations to tender being arranged.

(c) The Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank, or any equity investment made by the Bank, are used only for the purposes for which the loan or the equity investment was made and with due attention to considerations of economy and efficiency.

## CHAPTER V

### Additional powers and miscellaneous

## *Article 19*

### BORROWING AND OTHER POWERS

The Bank shall have, in addition to the powers specified elsewhere in this Agreement, the power to:

(a) Borrow funds in members or elsewhere, provided that a member, either at accession or such later date as the member may determine, may notify the Bank that:

(i) Before making a sale of its obligations in a market of that member, the Bank shall have obtained its approval; and/or

(ii) Where the obligations of the Bank are to be denominated in the currency of that member, the Bank shall have obtained its approval;

(b) Invest or deposit funds not needed in its operations;

(c) Buy and sell securities, in the secondary market, which the Bank has issued or guaranteed or in which it has invested;

(d) Guarantee securities in which it has invested in order to facilitate their sale;

(e) Exercise such other powers and adopt such rules and regulations as may be necessary or appropriate in furtherance of its purposes as set forth in article 2 of this Agreement; and

(f) Conclude agreements of cooperation with any public or private entity or entities.

## *Article 20*

### STATEMENT OF SECURITIES

Every security issued or guaranteed by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any Government or member, unless it is in fact the obligation of a particular Government or member, in which case it shall so state.

## *Article 21*

### FREE USE OF CURRENCIES

Members shall not impose any restrictions on the receipt, holding, use or transfer by the Bank of the following:

(a) Currencies received by the Bank in payment of subscriptions to its capital stock, in accordance with article 5 of this Agreement;

(b) Currencies obtained by the Bank by borrowing;

(c) Currencies and other resources administered by the Bank as contributions to Special Funds; and

(d) Currencies received by the Bank in payment on account of principal, interest, dividends, premiums, or other charges in respect of loans, investments, guarantees or the proceeds of disposal of such investments made out of any of the funds referred to in paragraphs (a) through (c) of this article, or in payment of commissions, fees or other charges.

## CHAPTER VI

### Financial management

## *Article 22*

### GENERAL

The Bank shall observe prudent financial management practices with a view to maintaining under all circumstances its ability to meet its financial obligations.

## *Article 23*

### LOSSES AND RESERVES

(a) In the Bank's ordinary operations, in cases of arrears or default on loans made, participated in, or guaranteed by the Bank, and in cases of losses on equity investment, the Bank shall take such action as it deems appropriate. The Bank shall maintain appropriate reserves and/or provisions against possible losses.

- (b) Losses arising in the Bank's ordinary operations shall be charged:
  - (i) First, to the provisions referred to in paragraph (a) of this article;
  - (ii) Second, to net income;
  - (iii) Third, against reserves and retained earnings;
  - (iv) Fourth, against the unimpaired paid-in capital; and
  - (v) Last, against an appropriate amount of the uncalled subscribed callable capital which shall be called in accordance with the provisions of paragraph (d) of article 2 of Schedule A of this Agreement.

## *Article 24*

### ALLOCATION OF NET INCOME

(a) When satisfied that reserves are at adequate levels and that the Bank has made appropriate provisions against possible losses under paragraph, (a) of article 23 of this Agreement, the Board of Governors, by special majority, may decide that a part of net income or retained earnings shall be distributed to members as a dividend or to another entity or fund for purposes consistent with the purposes of the Bank.

(b) Any such distribution to members shall be made in proportion to the share of each member in the capital of the Bank, provided that in calculating such number account shall be taken only of payments received in cash and promissory notes encashed in respect of such shares on or before the end of the relevant financial year. Payments to each member, and their use by the receiving member, shall be without restriction by any member.

## *Article 25*

### BUDGET

The President shall prepare an annual budget of revenues and expenditures of the Bank for approval by the Board of Directors.

## *Article 26*

### REPORTS

(a) The Bank shall publish an annual report containing an audited statement of its financial position and a profit and loss statement showing the results of its operations, and shall circulate to Directors at intervals of three months or less a summary statement of its accounts.

(b) The Bank shall report annually on the environmental impact of its activities and shall publish such other reports as it deems desirable to advance its purpose.

(c) Copies of all reports and statements prepared pursuant to this article shall be distributed to members.

## CHAPTER VII

### Organization and management

#### *Article 27*

##### STRUCTURE OF THE BANK

In addition to the Forum, the Bank shall have a Board of Governors, a Board of Directors, a President, officers and staff to perform such duties as the Bank may determine.

#### *Article 28*

##### THE BOARD OF GOVERNORS

(a) All the powers of the Bank shall be vested in the Board of Governors, except such powers as are, by the terms of this Agreement, specifically conferred upon another organ of the Bank. The Board of Governors may delegate to the Board of Directors the exercise of any of its powers, except the power to:

- (i) Elect the President and determine the salary and terms of the contract of service of the President;
- (ii) Decide that the President shall cease to hold office;
- (iii) Admit new members and determine the conditions of their admission;
- (iv) Suspend a member;
- (v) Decide on any increase or decrease in capital;
- (vi) Decide appeals from interpretations or applications of this Agreement given by the Board of Directors;
- (vii) Elect Directors;
- (viii) Determine the compensation of Directors and their Alternates;
- (ix) Approve the audited annual financial statements;
- (x) Allocate and distribute the net profits of the Bank;
- (xi) Sell all or substantially all the assets of the Bank;
- (xii) Cease operations and liquidate the Bank;
- (xiii) Distribute assets to members pursuant to article 51 of this Agreement; and
- (xiv) Amend this Agreement, including its Schedule and Annex.

(b) Each member shall be represented on the Board of governors and shall appoint one Governor and one Alternate, who shall serve at the pleasure of the appointing member and without reimbursement or remuneration from the Bank. No Alternate may vote except in the absence of his or her principal. At its inaugural meeting, and annually thereafter or at intervals determined by the Board of Governors, the Board shall elect one of the Governors as Chairperson who shall hold office until the election of the next Chairperson.

(c) The Board of Governors shall hold such meetings as may be provided for by the Board of Governors or called by the Board of Directors. The Board of Directors shall call meetings of the Board of Governors whenever requested by not less than five members of the Bank or members holding not less than one quarter of the total voting power of the members. The quorum for any meeting of the Board of Governors shall be a majority of the Governors representing not less than two thirds of the total voting power of the members.

(d) The Board of Governors, and the Board of Directors to the extent authorized, may adopt such rules and regulations and establish such subsidiary bodies as may be necessary or appropriate to conduct the business of the Bank.

## *Article 29*

### THE BOARD OF DIRECTORS

(a) The Board of Directors shall be responsible for the general operations of the Bank and shall, in addition to the powers assigned to it expressly by this Agreement, exercise all the powers delegated to it by the Board of Governors. In particular, it shall:

- (i) Prepare the work of the Board of Governors;
  - (ii) Establish policies concerning, inter alia
    - a. The financial operations and financial management of the Bank; and
    - b. The full disclosure of non-confidential information, and, as appropriate, consultation and participation with local communities throughout the project cycle;
  - (iii) Present the audited annual financial statements to the Board of Governors for approval;
  - (iv) Approve the budget of the Bank, including resources for the Forum; and
  - (v) Report periodically to the Board of Governors on progress toward regional economic cooperation.
- (b) Unless the Board of Governors decides otherwise by special majority,
- (i) Any Governor, representing a member with at least four per cent of the authorized capital stock, may elect a Director; and
  - (ii) Acting in agreement, two or more Governors, representing members with at least four per cent of the authorized capital stock, may elect a Director.

If any such Governor or Governors represent members which have acceded to this Agreement after a general election of Directors, such as at the inaugural meeting, any Director elected by that Governor or those Governors shall serve for a term coterminous with that of the Directors elected at that general election. Each Director may appoint an Alternate with full power to act for him or her in case of his or her absence or inability to act.

(c) Directors shall hold office for a term of three years and may be re-elected for no more than one successive term. They shall continue in office until

their successors shall have been chosen and assumed office. If the office of a Director becomes vacant more than one hundred and eighty days before the end of his or her term, a successor shall be chosen for the remainder of the term by the Governors who elected the former Director. A majority of the votes cast by such Governors shall be required for such election. If the office of a Director becomes vacant one hundred and eighty days or less before the end of his or her term, a successor may be chosen for the remainder of the term by the votes cast by such Governors who elected the former Director, in which election a majority of the votes cast by such Governors shall be required. While the office remains vacant, the Alternate of the former Director shall exercise the powers of the latter, except that of appointing an Alternate.

(d) The President shall be ex officio Chairperson of the Board of Directors, but shall have no vote except a deciding vote in case of an equal division.

(e) The Board of Directors shall meet at the call of its Chairperson acting on his or her own initiative or upon request of three Directors. A quorum for a meeting of the Board of Directors shall be a majority of the Directors exercising not less than two thirds of the total voting power. The Board of Directors may be regulation establish a procedure whereby its Chairperson, when he or she deems such action to be in the best interests of the Bank, may request a decision of the Board on a specific question without calling a meeting of the Board. It may also establish procedures for approving particular financial operations.

(f) The Board of Directors shall not meet in continuous session, shall not be resident at the Bank, and shall serve without remuneration or reimbursement from the Bank. By special majority, the Board of Governors, under such terms and conditions as it determines, may replace the non-resident Board of Directors with a resident Board of Directors of not more than twelve Directors.

## *Article 30*

### **PRESIDENT, OFFICERS AND STAFF**

(a) The President shall, under the direction of the Board of Directors, conduct the current business of the Bank, and shall be the legal representative of the Bank. He or she shall be responsible for the organization, appointment and dismissal of the officers and staff. In appointing officers and staff, the President shall, subject to the paramount importance of efficiency and technical competence, pay due regard to recruitment on a wide geographical basis among members of the Bank, with due attention to regional recruitment.

(b) The Board of Governors, by a vote of a majority of the total number of Governors, representing not less than a majority of the total voting power of the members, shall elect a President. The President, while holding office, shall not be a Governor or a Director or an Alternate for either. The term of office of the President shall be five years, and he or she may be re-elected once. He or she shall, however, cease to hold office when the Board of Governors so decides by special majority. If the office of the President for any reason becomes vacant, the Board of Governors, in accordance with the provisions of this paragraph, shall elect a successor for up to five years. The Board of Governors shall determine the salary and terms of the contract of services of the President.

(c) The Bank, its President, officers and staff shall in their decisions take into account only considerations relevant to the Bank's purposes and operations. Such considerations shall be weighed impartially in order to achieve and carry out the purposes of the Bank. The President, officers and staff of the Bank, in the discharge of their offices, shall owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from any attempts to influence any of them in the discharge of their duties.

### *Article 31*

#### VOTING

(a) The voting power of each member shall be equal to the number of its subscribed shares in the capital stock of the Bank. If a member fails to pay any part of the amount due in respect of the paid-in portion of shares to which it has subscribed under article 5 of this Agreement, such member shall be unable, for so long as such failure continues, to exercise that percentage of its voting power which equals the percentage which the amount due but unpaid bears to the total amount of the paid-in portion of shares subscribed to by that member in the capital stock of the Bank.

(b) In voting in the Board of Governors, each Governor shall be entitled to cast the votes of the member he or she represents. Except as otherwise expressly provided in this Agreement, all matters before the Board of Governors shall be decided by a majority of the voting power of the members voting.

(c) In voting in the Board of Directors, each Director shall be entitled to cast the number of votes to which the Governors who have elected him or her are entitled. A Director representing more than one member of the Bank may cast separately the votes of the members he or she represents. Except as otherwise expressly provided in this Agreement, all matters before the Board of Directors shall be decided by a majority of the voting power of the Directors voting.

### *Article 32*

#### LOCATION

(a) The principal office of the Bank shall be located in Cairo, Arab Republic of Egypt.

(b) The Bank may establish agencies or branch offices in any member of the Bank only on decision by special majority of the Board of Directors.

### *Article 33*

#### DEPOSITORIES AND CHANNEL OF COMMUNICATION

(a) Each member shall designate its central bank, or such other institution as may be agreed upon with the Bank, as a depository for the Bank's holdings of its currency as well as other assets of the Bank.

(b) Each member shall designate an appropriate official entity with which the Bank may communicate in connection with any matter arising under this Agreement. Whenever the approval of any member is required before any act may be done by the Bank, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix in notifying the member of the proposed act.

## CHAPTER VIII

### Privileges and immunities

#### *Article 34*

##### PURPOSES OF THE CHAPTER

To enable the Bank to fulfil its functions, the privileges and immunities set forth in this chapter shall be accorded to the Bank in each member.

#### *Article 35*

##### LEGAL PROCESS

Actions other than those within the scope of article 43 of this Agreement may be brought against the Bank only in a court of competent jurisdiction in a member in which the Bank has an office or has appointed an agent for the purpose of accepting service or notice of process. No such action against the Bank shall be brought (i) by members or persons acting for or deriving claims from members or (ii) in respect of personnel matters. The property and assets of the Bank shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of the final judgment or award against the Bank.

#### *Article 36*

##### ASSETS

(a) The property and assets of the Bank, including assets of the Special Funds, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

(b) To the extent necessary to carry out its operations under this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.



## *Article 37*

### ARCHIVES AND COMMUNICATIONS

- (a) The archives of the Bank shall be inviolable, wherever they may be.
- (b) The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

## *Article 38*

### OFFICIALS OF THE BANK

- (a) All Governors, Directors, Alternates, officers and staff of the Bank, experts performing missions for the Bank, and the President:
  - (i) Shall be immune from legal process with respect to acts performed by them in their official capacity, and shall enjoy inviolability of all their official papers and documents. This immunity shall not apply, however, to civil liability in the case of damage arising from a road traffic accident caused by any such Governor, Director, Alternate, officer, staff, expert or the President;
  - (ii) Not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials, and employees of comparable rank of other members; and
  - (iii) Shall be granted the same treatment in respect of traveling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.
- (b) The spouses and immediate dependents of the President, officers, staff and experts performing missions for the Bank who are resident in the member in which the principal or another office or agency of the Bank is located should, wherever possible, in accordance with the law of that member, be accorded opportunity to take employment in that member.

## *Article 39*

### TAXES

- (a) The Bank, its assets, property and income, and its operations and transactions authorized by this Agreement, shall be immune from all taxes and customs duties. The Bank shall also be immune from liability for the collection or payment of any tax or duty.
- (b) No tax shall be levied on or in respect of salaries, expense allowances or other emoluments paid by the Bank to the President, officers or staff of the Bank, except that a member may deposit, with its instrument of ratification, acceptance or approval of this Agreement, a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emolu-

ments paid by the Bank to citizens or nationals of such member. The Bank shall not make any reimbursement for such taxes. The Bank shall be exempt from any obligation for the payment, withholding or collection of such taxes.

(c) No tax of any kind shall be levied on any obligation or security issued or guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held, if that tax discriminates against such obligation or security or investment solely because it is issued or guaranteed by the Bank, or of the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

## *Article 40*

### APPLICATION OF THIS CHAPTER

Each member shall promptly take such action as is necessary within its jurisdiction for the purpose of making effective in terms of its own law the principles set forth in this chapter, and shall inform the Bank in detail of the action which it has taken.

## *Article 41*

### WAIVER

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Bank and may be waived, to such extent and upon such conditions as the Bank may determine, in cases where such a waiver would not prejudice its interests. The President shall waive the immunity of any of the Bank's officers, staff or experts in cases where, in his or her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank. In similar circumstances and under the same conditions, the Board of Governors shall have the right and the duty to waive any immunity, privilege or exemption in respect of the President.

## CHAPTER IX

### Settlement of disputes

## *Article 42*

### INTERPRETATION AND APPLICATION OF THE AGREEMENT

(a) Any question of interpretation or application of the provisions of this Agreement arising between any member of the Bank and the Bank or among members of the Bank shall be submitted to the Board of Directors for its decision. Any member which is particularly affected by the question and which is not otherwise represented directly on the Board of Directors may send a representative to attend any meeting of the Board of Directors at which such question is considered.

(b) In any case where the Board of Directors has given a decision under paragraph (a) of this article, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the result of the referral to the Board of Governors, the Bank may, so far as it deems necessary, act on the basis of the decision of the Board of Directors.

### *Article 43*

#### DISPUTES INVOLVING THE BANK AND RELATING TO WITHDRAWAL OR SUSPENSION

Without prejudice to the provisions of article 42 of this Agreement, any dispute between the Bank and a member or former member which has withdrawn or been suspended shall be settled in accordance with the procedure set forth in Annex A of this Agreement.

### CHAPTER X

#### Amendments

### *Article 44*

#### GENERAL

The Board of Governors, by special majority, may amend this Agreement, including its Schedule and Annex, except that the affirmative vote of all members shall be required for amendments to the provisions on pre-emptive rights in articles 5 and 52, article 46 (withdrawal), and paragraph (f) of article 2 of Schedule of this Agreement (limit on liability).

### *Article 45*

#### PROCEDURE

Any proposal to amend this Agreement, including its Schedule and Annex, whether by a member or a Governor or a Director, shall be communicated to the Chairperson of the Board of Directors who shall bring the proposal before the Board of Directors. If the proposed amendment is recommended by the Board of Directors, it shall be submitted to the Board of Governors for approval. When an amendment has been duly approved by the Board of Governors, the Bank shall so certify by formal communication addressed to all members. Amendments shall enter into force for all members ninety days after the date of the formal communication unless the Board of Governors shall specify a different date.

### CHAPTER XI

#### Withdrawal, suspension of membership and cessation of operations

## *Article 46*

### WITHDRAWAL

Any member may, after the expiration of three years following the date upon which this Agreement has entered into force with respect to such member, withdraw from the Bank at any time by giving notice in writing to the Bank at its principal office. Any withdrawal shall become effective ninety days following the date of the receipt of such notice by the Bank. A member may revoke such notice as long as it has not become effective.

## *Article 47*

### SUSPENSION OF MEMBERSHIP

(a) If a member fails to fulfil any of its obligations under this Agreement, the Board of Governors, by special majority, may suspend its membership.

(b) While under suspension, a member shall have no rights under this Agreement, except for the rights under this Agreement, except for the right of withdrawal and other rights provided in this chapter and chapter IX of this Agreement, but shall remain subject to all its obligations.

(c) The suspended member shall automatically cease to be a member one year from the date of its suspension unless the Board of Governors decides to extend the period of suspension or to restore the member to good standing.

## *Article 48*

### RIGHTS AND DUTIES OF FORMER MEMBERS

(a) Upon cessation of membership, a former member shall remain liable for all its obligations, including its contingent obligations, under this Agreement which shall have been in effect before the cessation of its membership.

(b) Without prejudice to paragraph (a) of this Article, the Bank shall enter into an arrangement with such former member for the settlement of their respective claims and obligations. Any such arrangement shall be approved by the Board of Governors.

## *Article 49*

### REVIEW OF OPERATIONS, TERMINATION AND DISPOSITION OF ASSETS

(a) The Board of Governors shall undertake a fundamental review of the operations of the Bank in the tenth year following the inaugural meeting.

(b) Following that review or at other times, the Board of Governors, by special majority, may terminate the operations of the Bank.

(c) The Board of Governors, by special majority, may sell all or substantially all the assets of the Bank, including the Bank's portfolio of loans, provided that, prior to the sale, arrangements are in place to discharge or provide for all liabilities to creditors and holders of guarantees.

## *Article 50*

### PROTECTION OF CREDITORS AND OTHERS ON TERMINATION

Upon termination of the operations of the Bank:

(a) The Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of its assets and settlement of its obligations;

(b) The liability of all members for subscriptions to the capital stock of the Bank shall continue until all claims of creditors and holders of guarantees shall have been discharged; and

(c) The Bank shall take immediate and appropriate steps to discharge or provide for all liabilities to creditors and holders of guarantees.

## *Article 51*

### DISTRIBUTION TO MEMBERS

(a) After the Bank has taken a decision in accordance with paragraph (b) of article 49 and complied with paragraphs (a) and (c) of article 50 of this Agreement, or sold all or substantially all the assets of the Bank under paragraph (c) of article 49 of this Agreement, the Board of Governors may decide, by special majority, to make a distribution to members in proportion to each member's share in the subscribed capital. No member shall be entitled to its share in the assets of the Bank unless that member has settled all outstanding claims by the Bank against it. The shares of assets distributed need not be uniform as to type of assets. Every distribution of assets shall be made at such times as the Board of Governors shall determine and in such manner as it shall deem fair and equitable.

(b) The Bank shall distribute any remaining assets of the Special Funds in accordance with the terms of relevant agreements.

## CHAPTER XII

### Definitions and final provisions

## *Article 52*

### DEFINITIONS

(a) "Pre-emptive right" means a reasonable opportunity for a member to subscribe, under such uniform terms and conditions as the Board of Governors shall determine, to a proportion of the increase in stock equivalent to the proportion which its stock subscribed bears to the total subscribed capital stock immediately prior to such increase.

(b) "Special majority" means an affirmative vote by eighty per cent of the total voting power.

- (c) "Ordinary resources" of the Bank shall include:
  - (i) Authorized capital stock of the Bank, including both the paid-in and callable portions of shares;
  - (ii) Funds raised by borrowings of the Bank by virtue of powers conferred by paragraph (a) of article 19 of this Agreement;
  - (iii) Funds received in repayment of loans or guarantees, and proceeds from the disposal of equity investments, made with or based on the resources indicated in subparagraphs (i) and (ii) of this paragraph;
  - (iv) Income derived from loans and equity investments, and income from guarantees, made from or based on the resources indicated in subparagraphs (i), (ii) and (iii) of this paragraph; and
  - (v) Any other funds or income received by the Bank which do not from part of its Special Funds resources referred to in paragraph (d) of this article.
- (d) "Special Funds resources" shall refer to the resources of any Special Fund and shall include:
  - (i) Funds accepted by the Bank for inclusion in any Special Fund;
  - (ii) Funds repaid in respect of loans or guarantees, and the proceeds of equity investments, financed from the resources of any Special Fund which, under the agreement governing that Special Fund, are received by such Special Fund; and
  - (iii) Income derived from investment of Special Funds resources, or from the operations of any Special Fund.

### *Article 53*

#### SIGNATURE, RATIFICATION, ACCEPTANCE OR APPROVAL AND ENTRY INTO FORCE

(a) This Agreement shall be open for signature at United Nations Headquarters in New York by, for or on behalf of all prospective members whose names are set forth in Schedule Agreement, and shall be subject to ratification, acceptance or approval by the signatories, in accordance with their own procedures.

(b) Instruments of ratification, acceptance or approval of this Agreement and amendments thereto shall be deposited with the Secretary-General of the United Nations who shall act as the depositary of this Agreement (hereinafter referred to as the "Depositary"). The Depositary shall transmit certified copies of this Agreement to each signatory, and shall notify the signatories of deposits of instruments of ratification, acceptance and approval, the dates thereof, and the date on which this Agreement enters into force.

(c) This Agreement shall enter into force on the date on which instruments of ratification, acceptance or approval shall have been deposited by signatories whose initial subscriptions represent not less than sixty-five per cent of the total subscriptions set forth in Schedule A of this Agreement.

(d) For each prospective member which deposits its instrument of ratification, acceptance or approval after this Agreement shall have entered into force, this Agreement shall enter into force on the date of such deposit.

(e) If this Agreement shall not have entered into force within two years after its opening for signature, the Depositary shall convene a conference of interested parties to determine the future course of action.

## *Article 54*

### INAUGURAL MEETING

(a) Upon entry into force of this Agreement, the Depositary shall call inaugural meeting of the Board of Governors. This meeting shall be held at the principal office of the Bank within sixty days from the date on which this Agreement has entered into force or as soon as practicable thereafter.

(b) At its inaugural meeting, the Board of Governors shall:

- (i) Elect the President and Directors;
- (ii) Make arrangements for determining the date of the commencement of the Bank's operations; and
- (iii) Make such other arrangements as appear to it necessary to prepare for the commencement of the Bank's operations.

(c) The Bank shall notify its members of the date of commencement of its operations.

## *Article 55*

### REGISTRATION

The Depositary shall register this Agreement with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

DONE on 28, August 1996, in a single copy in the English language.

## **Schedule A**

### *Article 1*

#### SUBSCRIPTION

<i>Member</i>	<i>Total Number of Shares</i>	<i>Paid-in Portion (in SDRs)</i>	<i>Callable portion (in SDRs)</i>
NON-REGIONAL MEMBERS			
Austria	333,870	8,346,750	25,040,250
Canada	918,143	22,953,563	68,860,688
Cyprus	83,468	2,086,700	6,260,100
Greece	667,740	16,693,500	50,080,500
Italy	1,669,350	41,733,750	125,201,250
Japan	3,171,765	79,294,125	237,882,375
Malta	83,468	2,086,700	6,260,100
Netherlands	1,168,545	29,213,625	87,640,875

<i>Member</i>	<i>Total Number of Shares</i>	<i>Paid-in Portion (in SDRs)</i>	<i>Callable portion (in SDRs)</i>
NON-REGIONAL MEMBERS			
Republic of Korea	417,338	10,433,450	31,300,350
Russian Federation	2,003,220	50,080,500	150,241,500
Turkey	333,870	8,346,750	25,040,250
United States of America	7,011,270	175,281,750	525,845,250
REGIONAL MEMBERS			
Algeria	667,740	16,693,500	50,080,500
Egypt, Arab Republic of	1,335,480	33,387,000	100,161,000
Israel	1,335,480	33,387,000	100,161,000
Jordan	1,335,480	33,387,000	100,161,000
Morocco	667,740	16,693,500	50,080,500
Palestinian Authority	1,335,480	33,387,000	100,161,000
Tunisia	667,740	16,693,500	50,080,500

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## *Article 2*

### PAYMENT

(a) All payment obligations of members with respect to initial capital stock shall be settled on the basis of the average value of the Special Drawing Right in terms of a freely usable currency or the ECU for the period from 1 August 1995, to 31 October 1995.

(b) Each original member shall pay for the paid-in portion of shares to which it subscribed in five installments of twenty per cent each. Each member shall pay the first installment within ninety days from the date on which this Agreement enters into force with respect to such member, and, subject to its legislative requirements, shall pay each of the four remaining installments one year from the date on which the preceding installment became due.

(c) Payment of each installment of the paid-in portion of shares may be made in cash or in the form of non-negotiable, non-interest-bearing promissory notes or similar obligations denominated in a freely usable currency or ECU, to be encashed pro rata pursuant to a decision by the Board of Directors in order to meet the Bank's obligations or its operational needs.

(d) Payment of the amount subscribed to the callable portion of the capital stock of the Bank shall be subject to call only as and when required by the Bank to meet its liabilities. Calls on any portion of unpaid subscriptions shall be uniform on all shares. If the amount received by the Bank on a call shall be insufficient to meet the obligations which have necessitated the call, the bank may further successive calls on unpaid subscriptions until the aggregate amount received by it shall be sufficient to meet such obligations.



(e) Payments of subscriptions in cash shall be made in a freely usable currency. For purposes of this article, a freely usable currency is a currency determined to be freely usable by the International Monetary Fund.

(f) Liability on shares shall be limited to the unpaid portion of the issue price.

## ANNEX A

### ARBITRATION

*Article 1.* The parties to a dispute within the scope of this Annex shall attempt to settle such dispute by negotiation before seeking arbitration. Negotiation shall be deemed to have been exhausted if the parties fail to reach a settlement within a period of one hundred and twenty days from the date of the request to enter into negotiation.

*Article 2.* Arbitration proceedings shall be instituted by means of a notice by the party seeking arbitration (the claimant) addressed to the other party or parties to the dispute (the respondent). The notice shall specify nature of the dispute, the relief sought and the name of the arbitrator appointed by the claimant. The respondent shall, within thirty days after the date of receipt of the notice, notify the claimant of the name of the arbitrator appointed by it. The two parties shall, within a period of thirty days from the date of appointment of the second arbitrator, select a third arbitrator, who shall act as President of the Arbitral Tribunal (the Tribunal).

*Article 3.* If the Tribunal shall not have constituted within sixty days from the date of the notice, the arbitrator not yet appointed or the President of the Tribunal not yet selected shall be appointed by the President of the International Court of Justice or such other authority as may have been prescribed by regulation adopted by the Bank to make the appointment.

*Article 4.* No party shall have the right to change the arbitrator appointed by it once the hearing of the dispute has commenced. In case any arbitrator (including the President of the Tribunal) shall resign, die, or become incapacitated, a successor shall be appointed in the manner followed in the appointment of his or her predecessor and such successor shall have the same powers and duties of the arbitrator he or she succeeds.

*Article 5.* The Tribunal shall convene first at such time and place as shall be determined by the President of the Tribunal. Thereafter, the Tribunal shall determine the place and dates of its meetings.

*Article 6.* Unless otherwise provided in this Annex or agreed upon by the parties, the Tribunal shall determine its procedure.

*Article 7.* The Tribunal shall be the judge of its own competence except that, if an objection is raised before the Tribunal to the effect that the dispute falls within the jurisdiction of the Board of Directors or the Board of Governors under Article 42 of this Agreement and the Tribunal is satisfied that the objection is genuine, the objection shall be referred by the Tribunal to the Board of Directors or the Board of Governors, as the case may be, and arbitration proceedings shall be stayed until a decision has been reached on the matter, which shall be binding upon the Tribunal.

*Article 8.* The Tribunal shall, in any dispute within the scope of this Annex, apply the provisions of this Agreement, the Bank's by-laws and regulations, and the applicable rules of international law.

*Article 9.* The Tribunal shall afford a fair hearing to all the parties. All decisions of the Tribunal shall be taken by a majority vote and shall state the reasons on which they are based. The award of the Tribunal shall be in writing and shall be signed by at least two arbitrators, and a copy thereof shall be transmitted to each party. The award shall be final and binding upon the parties and shall not be subject to appeal, annulment or revision.

#### 4. COMPREHENSIVE NUCLEAR-TEST-BAN TREATY.<sup>7</sup> DONE AT NEW YORK ON 10 SEPTEMBER 1996<sup>8</sup>

##### PREAMBLE

*The State Parties to this Treaty* (hereinafter referred to as “the States Parties”),

*Welcoming* the international agreements and other positive measures of recent years in the field of nuclear disarmament, including reductions in arsenals of nuclear weapons, as well as in the field of the prevention of nuclear proliferation in all its aspects.

*Underlining* the importance of the full and prompt implementation of such agreements and measures,

*Convinced* that the present international situation provides an opportunity to take further effective measures towards nuclear disarmament and against the proliferation of nuclear weapons in all its aspects, and declaring their intention to take such measures,

*Stressing* therefore the need for Continued systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons, and of general and complete disarmament under strict and effective international control,

*Recognizing* that the cessation of all nuclear weapon test explosions and all other nuclear explosions, by constraining the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons and ending the development of advanced new types of nuclear weapons, constitutes an effective measure of nuclear disarmament and non-proliferation in all its aspects,

*Further recognizing* that an end to all such nuclear explosions will thus constitute a meaningful step in the realization of a systematic process to achieve nuclear disarmament,

*Convinced* that the most effective way to achieve an end to nuclear testing is through the conclusion of a universal and internationally and effectively verifiable comprehensive nuclear test-ban treaty, which has long been one of the highest priority objectives of the international community in the field of disarmament and non-proliferation,

*Noting* the aspirations expressed by the Parties to the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time,

*Noting* also the views expressed that this Treaty could contribute to the protection of the environment,

*Affirming* the purpose of attracting the adherence of all States to this Treaty and its objective to contribute effectively to the prevention of the proliferation of nuclear weapons in all its aspects, to the process of nuclear disarmament and therefore to the enhancement of international peace and security,

*Have agreed* as follows:

## *Article I*

### BASIC OBLIGATIONS

1. Each State Party undertakes not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control.
2. Each State Party undertakes, furthermore, to refrain from causing encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion.

## *Article II*

### THE ORGANIZATION

#### *A. General provisions*

1. The States Parties hereby establish the Comprehensive Nuclear Test-Ban Treaty Organization (hereinafter referred to as “the Organization”) to achieve the object and purpose of this Treaty, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties.
2. All States Parties shall be members of the Organization. A State Party shall not be deprived of its membership in the Organization.
3. The seat of the Organization shall be Vienna, Republic of Austria.
4. There are hereby established as organs of the Organization: the Conference of the States Parties, the Executive Council and the Technical Secretariat, which shall include the International Data Centre.
5. Each State Party shall cooperate with the Organization in the exercise of its functions in accordance with this Treaty. States Parties shall consult, directly among themselves, or through the Organization or other appropriate international procedures, including procedures within the framework of the United Nations and in accordance with its Charter, on any matter which may be raised relating to the object and purpose, or the implementation of the provisions, of this Treaty.
6. The Organization shall conduct its verification activities provided for under this Treaty in the least intrusive manner possible consistent with the timely and efficient accomplishment of their objectives. It shall request only the information and data necessary to fulfil its responsibilities under this Treaty. It shall take every precaution to protect the confidentiality of information on civil and military activities and facilities coming to its knowledge in the implementation of this Treaty and, in particular, shall abide by the confidentiality provisions set forth in this Treaty.
7. Each State Party shall treat as confidential and afford special handling to information and data that it receives in confidence from the Organization in connection with the implementation of this Treaty. It shall treat such information and data exclusively in connection with its rights and obligations under this Treaty.

8. The Organization, as an independent body, shall seek to utilize existing expertise and facilities, as appropriate, and to maximize cost efficiencies, through cooperative arrangements with other international organizations such as the International Atomic Energy Agency. Such arrangements, excluding those of a minor and normal commercial and contractual nature, shall be set out in agreements to be submitted to the Conference of the States Parties for approval.

9. The costs of the activities of the Organization shall be met annually by the States Parties in accordance with the United Nations scale of assessments adjusted to take into account differences in membership between the United Nations and the Organization.

10. Financial contributions of States Parties to the Preparatory Commission shall be deducted in an appropriate way from their contributions to the regular budget.

11. A member of the Organization which is in arrears in the payment of its assessed contribution to the Organization shall have no vote in the Organization if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding two full years. The Conference of the States Parties may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.

## **B. *The Conference of the States Parties***

### ***Composition, Procedures and Decision-making***

12. The Conference of the States Parties (hereinafter referred to as "the Conference") shall be composed of all States Parties. Each State Party shall have one representative in the Conference, who may be accompanied by alternates and advisers.

13. The initial session of the Conference shall be convened by the Depositary no later than 30 days after the entry into force of this Treaty.

14. The Conference shall meet in regular sessions, which shall be held annually, unless it decides otherwise.

15. A special session of the Conference shall be convened:

(a) When decided by the Conference;

(b) When requested by the Executive Council; or

(c) When requested by any State Party and supported by a majority of the States Parties.

The special session shall be convened no later than 30 days after the decision of the Conference, the request of the Executive Council, or the attainment of the necessary support, unless specified otherwise in the decision or request.

16. The Conference may also be convened in the form of an Amendment Conference, in accordance with article VII.

17. The Conference may also be convened in the form of a Review Conference, in accordance with article VIII.

18. Sessions shall take place at the seat of the Organization unless the Conference, decides otherwise.

19. The Conference shall adopt its rules of procedure. At the beginning of each session, it shall elect its President and such other officers as may be required. They shall hold office until a new President and other officers are elected at the next session.

20. A majority of the States Parties shall constitute a quorum.

21. Each State Party shall have one vote.

22. The Conference shall take decisions on matters of procedure by a majority of members present and voting. Decisions on matters of substance shall be taken as far as possible by consensus. If consensus is not attainable when an issue comes up for decision, the President of the Conference shall defer any vote for 24 hours and during this period of deferment shall make every effort to facilitate achievement of consensus, and shall report to the Conference before the end of this period. If consensus is not possible at the end of 24 hours, the Conference shall take a decision by a two-thirds majority of members present and voting unless specified otherwise in this Treaty. When the issue arises as to whether the question is one of substance or not, that question shall be treated as a matter of substance unless otherwise decided by the majority required by decisions on matters of substance.

23. When exercising its function under paragraph 26 (k), the Conference shall take a decision to add any State to the list of States contained in annex 1 to this Treaty in accordance with the procedure for decisions on matters of substance set out in paragraph 22. Notwithstanding paragraph 22, the Conference shall take decisions on any other change to annex 1 to this Treaty by consensus.

### *Powers and Functions*

24. The Conference shall be the principal organ of the Organization. It shall consider any questions, matters or issues within the scope of this Treaty, including those relating to the powers and functions of the Executive Council and the Technical Secretariat, in accordance with this Treaty. It may make recommendations and take decisions on any questions, matters or issues within the scope of this Treaty raised by a State Party or brought to its attention by the Executive Council.

25. The Conference shall oversee the implementation of, and review compliance with, this Treaty and act in order to promote its object and purpose. It shall also oversee the activities of the Executive Council and the Technical Secretariat and may issue guidelines to either of them for the exercise of their functions.

26. The Conference shall:

(a) Consider and adopt the report of the Organization on the implementation of this Treaty and the annual programme and budget of the Organization, submitted by the Executive Council, as well as consider other reports;

(b) Decide on the scale of financial contributions to be paid by States Parties in accordance with paragraph 9;

(c) Elect the members of the Executive Council;

(d) Appoint the Director-General of the Technical Secretariat (hereinafter referred to as "the Director-General");

(e) Consider and approve the rules of procedure of the Executive Council submitted by the latter;

(f) Consider the review scientific and technological developments that could affect the operation of this Treaty. In this context, the Conference may direct the Director-General to establish a Scientific Advisory Board to enable him or her, in the performance of his or her functions, to render specialized advice in areas of science and technology relevant to this Treaty to the Conference, to the Executive Council, or to States Parties. In that case, the Scientific Advisory Board shall be composed of independent experts serving in their individual capacity and appointed, in accordance with terms of reference adopted by the Conference, on the basis of their expertise and experience in the particular scientific fields relevant to the implementation of this Treaty;

(g) Take the necessary measures to ensure compliance with this Treaty and to redress and remedy any situation that contravenes the provisions of this Treaty, in accordance with article V;

(h) Consider and approve at its initial session any draft agreements, arrangements, provisions, procedures, operational manuals, guidelines and any other documents developed and recommended by Preparatory Commission;

(i) Consider and approve agreements or arrangements negotiated by the Technical Secretariat with States Parties, other States and international organizations to be concluded by the Executive Council on behalf of the Organization in accordance with paragraph 38 (h);

(j) Establish such subsidiary organs as it finds necessary for the exercise of its functions in accordance with this Treaty; and

(k) Update annex 1 to this Treaty, as appropriate, in accordance with paragraph 23.

### C. *The Executive Council*

#### *Composition, procedures and decision-making*

27. The Executive Council shall consist of 51 members. Each State Party shall have the right, in accordance with the provisions of this Article, to serve on the Executive Council.

28. Taking into account the need for equitable geographical distribution, the Executive Council shall comprise:

- (a) Ten States Parties from Africa;
- (b) Seven States Parties from Eastern Europe;
- (c) Nine States Parties from Latin America and the Caribbean;
- (d) Seven States Parties from the Middle East and South Asia;
- (e) Ten States Parties from North America and Western Europe; and
- (f) Eight States Parties from South-East Asia, the Pacific and the Far East.

All States in each of the above geographical regions are listed in annex 1 to this Treaty. Annex 1 to this Treaty shall be updated, as appropriate, by the Conference in accordance with paragraphs 23 and 26 (k). It shall not be subject to amendments or changes under the procedures contained in article VII.

29. The members of the Executive Council shall be elected by the Conference. In this connection, each geographical region shall designate States Parties from that region for election as members of the Executive Council as follows:

(a) At least one third of the seats allocated to each geographical region shall be filled, taking into account political and security interests, by States Parties in that region designated on the basis of the nuclear capabilities relevant to the Treaty as determined by international data as well as all or any of the following indicative criteria in the order of priority determined by each region:

- (i) Number of monitoring facilities of the International Monitoring System;
- (ii) Expertise and experience in monitoring technology; and
- (iii) Contribution to the annual budget of the Organization;

(b) One of the seats allocated to each geographical region shall be filled on a rotational basis by the State Party that is first in the English alphabetical order among the States Parties in that region that have not served as members of the Executive Council for the longest period of time since becoming States Parties or since their last term, whichever is shorter. A State Party designated on this basis may decide to forgo its seat. In that case, such a State Party shall submit a letter of renunciation to the Director-General, and the seat shall be filled by the State Party following next-in-order according to this sub-paragraph; and

(c) The remaining seats allocated to each geographical region shall be filled by States Parties designated from among all the States Parties in that region by rotation or elections.

30. Each member of the Executive Council shall have one representative on the Executive Council, who may be accompanied by alternates and advisers.

31. Each member of the Executive Council shall hold office from the end of the session of the Conference at which that member is elected until the end of the second regular annual session of the Conference thereafter, except that for the first election of the Executive Council, 26 members shall be elected to hold office until the end of the third regular annual session of the Conference, due regard being paid to the established numerical proportions as described in paragraph 28.

32. The Executive Council shall elaborate its rules of procedure and submit them to the Conference for approval.

33. The Executive Council shall elect its Chairman from among its members.

34. The Executive Council shall meet for regular sessions. Between regular sessions it shall meet as may be required for the fulfillment of its powers and functions.

35. Each member of the Executive Council shall have one vote.

36. The Executive Council shall take decisions on matters of procedure by a majority of all its members. The Executive Council shall take decisions on matters of substance by a two-thirds majority of all its members unless specified otherwise in this Treaty. When the issue arises as to whether the question is one of substance or not, that question shall be treated as a matter of substance unless otherwise decided by the majority required for decisions on matters of substance.

### *Powers and functions*

37. The Executive Council shall be the executive organ of the Organization. It shall be responsible to the Conference. It shall carry out the powers and

functions entrusted to it in accordance with this Treaty. In so doing, so, it shall act in conformity with the recommendations, decisions and guidelines of Conference and ensure their continuous and proper implementation.

38. The Executive Council shall:

- (a) Promote effective implementation of, and compliance with, this Treaty;
- (b) Supervise the activities of the Technical Secretariat;
- (c) Make recommendations as necessary to the Conference for consideration of further proposals for promoting the object and purpose of this Treaty;
- (d) Cooperate with the National Authority of each State Party;
- (e) Consider and submit to the Conference the draft annual programme and budget of the Organization, the draft report of the Organization on the implementation of this Treaty, the report on the performance of its own activities and such other reports as it deems necessary or that the Conference may request;
- (f) Make arrangements for the sessions of the Conference, including the preparation of the draft agenda;
- (g) Examine proposals for changes, on matters of an administrative or technical nature, to the Protocol or the Annexes thereto, pursuant to Article VII, and make recommendations to the States Parties regarding their adoption;
- (h) Conclude, subject to prior approval of the Conference, agreements or arrangements with States Parties, other States and international organizations on behalf of the Organization and supervise their implementation, with the exception of agreements or arrangements referred to in subparagraph (i);
- (i) Approve and supervise the operation of agreements or arrangements relating to the implementation of verification activities with States Parties and other States; and
- (j) Approve any new operational manuals and any changes to the existing operational manuals that may be proposed by the Technical Secretariat.

39. The Executive Council may request a special session of the Conference.

40. The Executive Council shall:

- (a) Facilitate cooperation among States Parties, and between States Parties and the Technical Secretariat, relating to the implementation of this Treaty through information exchanges;
- (b) Facilitate consultation and clarification among States Parties in accordance with article IV; and
- (c) Receive, consider and take action on requests for, and reports on, on-site inspections in accordance with article IV.

41. The Executive Council shall consider any raised by a State Party about possible non-compliance with this Treaty and abuse of the

Right established by this Treaty. IN so doing, the Executive Council shall consult with the States Parties involved and, as appropriate, request a State Party to take measures to redress the situation within a specified time. To the extent that the Executive Council considers further action to be necessary, it shall take, inter alia, one or more of the following measures:

- (a) Notify all States Parties of the issue or matter;
- (b) Bring the issue or matter to the attention of the Conference;



(c) Make recommendations to the Conference or take action, as appropriate, regarding measures to redress the situation and to ensure compliance in accordance with article V.

#### *D. The Technical Secretariat*

42. The Technical Secretariat shall assist States Parties in the implementation of this Treaty. The Technical Secretariat shall assist the Conference and the Executive Council in the performance of their functions. The Technical Secretariat shall carry out the verification and other functions entrusted to it by this Treaty, as well as those functions delegated to it by the Conference or the Executive Council in accordance with this Treaty. The Technical Secretariat shall include, as an integral part, the International Data Centre.

43. The functions of the Technical Secretariat with regard to verification of compliance with this Treaty shall, in accordance with Article IV and the Protocol, include, inter alia:

(a) Being responsible for supervising and coordinating the operation of the International Monitoring System;

(b) Operating the International Data Centre;

(c) Routinely receiving, processing, analyzing and reporting on International Monitoring System data;

(d) Providing technical assistance in, and support for, the installation and operation of monitoring stations;

(e) Assisting the Executive Council in facilitating consultation and clarification among States Parties;

(f) Receiving requests for on-site inspections and processing them, facilitating Executive Council consideration of such requests, carrying out the preparations for, and providing technical support during, the conduct of on-site inspections, and reporting to the Executive Council;

(g) Negotiating agreements or arrangements with States Parties, other States and international organizations and concluding, subject to prior approval by the Executive Council, any such agreements or arrangements relating to verification activities with States Parties or other States; and

(h) Assisting the States Parties through their National Authorities on other issues of verification under this Treaty.

44. The Technical Secretariat shall develop and maintain, subject to approval by the Executive Council, operation manuals to guide the operation of the various components of the verification regime, in accordance with article IV and the Protocol. These manuals shall not constitute integral parts of this Treaty or the Protocol and may be changed by the Technical Secretariat subject to approval by the Executive Council. The Technical Secretariat shall promptly inform the States Parties of any changes in the operational manuals.

45. The functions of the Technical Secretariat with respect to administrative matters shall include:

(a) Preparing and submitting to the Executive Council the draft programme and budget of the Organization;

(b) Preparing and submitting to the Executive Council the draft report of the Organization on the implementation of this Treaty and such other reports as the Conference or the Executive Council may request;

(c) Providing administrative and technical support to the Conference, the Executive Council and other subsidiary organs;

(d) Addressing and receiving communications on behalf of the Organization relating to the implementation of this Treaty; and

(e) Carrying out the administrative responsibilities related to any agreements between the Organization and other international organizations.

46. All requests and notifications by States Parties to the Organization shall be transmitted through their National Authorities to the Director-General. Requests and notifications shall be in one of the official languages of this Treaty. In response the Director-General shall use the language of the transmitted request or notification.

47. With respect to the responsibilities of the Technical Secretariat for preparing and submitting to the Executive Council the draft programme and budget of the Organization, the Technical Secretariat shall determine and maintain a clear accounting of all costs for each facility established as part of the International Monitoring System. Similar treatment in the draft programme and budget shall be accorded to all other activities of the Organization.

48. The Technical Secretariat shall promptly inform the Executive Council of any problems that have arisen with regard to the discharge of its functions that have come to its notice in the performance of its activities and that it has been unable to resolve through consultations with the State Party concerned.

49. The Technical Secretariat shall comprise a Director-General, who shall be its head and chief administrative officer, and such scientific, technical and other personnel as may be required. The Director-General shall be appointed by the Conference upon the recommendation of the Executive Council for a term of four years, renewable for one further term, but not thereafter. The first Director-General shall be appointed by the Conference at its initial session upon the recommendation of the Preparatory Commission.

50. The Director-General shall be responsible to the Conference and the Executive Council for the appointment of the staff and the organization and functioning of the Technical Secretariat. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of professional expertise, experience, efficiency, competence and integrity. Only citizens of States Parties shall serve as the Director-General, as inspectors or as members of the professional and clerical staff. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible. Recruitment shall be guided by the principle that the staff shall be kept to the minimum necessary for the proper discharge of the responsibilities of the Technical Secretariat.

51. The Director-General may, as appropriate, after consultation with the Executive Council, establish temporary working groups of scientific experts to provide recommendations on specific issues.

52. In the performance of their duties, the Director-General, the inspectors, the inspection assistants and the members of the staff shall not seek or receive instructions from any Government or from any other source external to the Organization. They shall refrain from any action that might reflect adversely on their positions as international officers responsible only to the Organization. The Director-General shall assume responsibility for the activities of an inspection team.

53. Each State Party shall respect the exclusively international character of the responsibilities of the Director-General, the inspectors, the inspection assistants and members of the staff and shall not seek to influence them in the discharge of their responsibilities.

#### *E. Privileges and immunities*

54. The Organization shall enjoy on the territory and in any other place under the jurisdiction or control of a State Party such legal capacity and such privileges and immunities as are necessary for the exercise of its functions.

55. Delegates of States Parties, together with their alternates and advisers, representatives of members elected to the Executive Council, together with their alternates and advisers, the Director-General, the inspectors, the inspection assistants and the members of the staff of the Organization shall enjoy such privileges and immunities as are necessary in the independent exercise of their functions in connection with the Organization.

56. The legal capacity, privileges and immunities referred to in this Article shall be defined in agreements between the Organization and the States Parties as well as in an agreement between the Organization and the State in which the Organization is seated. Such agreements shall be considered and approved in accordance with paragraph 26 (h) and (i).

57. Notwithstanding paragraphs 54 and 55, the privileges and immunities enjoyed by the Director-General, the inspectors, the inspection assistants and the members of the staff of the Technical Secretariat during the conduct of verification activities shall be those set forth in the Protocol.

### *Article III*

#### NATIONAL IMPLEMENTATION MEASURES

1. Each State Party shall, in accordance with its constitutional processes, take any necessary measures to implement its obligations under this Treaty. In particular, it shall take any necessary measures.

(a) To prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Treaty;

(b) To prohibit natural and legal persons from undertaking any such activity anywhere under its control; and

(c) To prohibit, in conformity with international law, natural persons possessing its nationality from undertaking any such activity anywhere.

2. Each State Party shall cooperate with other States Parties and afford the appropriate form of legal assistance to facilitate the implementation of the obligations under paragraph 1.

3. Each State Party shall inform the Organization of the measures taken pursuant to this article.

4. In order to fulfil its obligations under the treaty, each State Party shall designate or set up a National Authority and shall so inform the Organization upon entry into force of the Treaty for it. The National Authority shall serve as the national focal point for liaison with the Organization and with other States Parties.

## *Article IV*

### VERIFICATION

#### *A. General provisions*

1. In order to verify compliance with this Treaty, a verification regime shall be established consisting of the following elements:

- (a) An International Monitoring System;
- (b) Consultation and clarification;
- (c) On-site inspections; and
- (d) Confidence-building measures.

At entry force of this Treaty, the verification regime shall be capable of meeting the verification requirements of this Treaty.

2. Verification activities shall be based on objective information, shall be limited to the subject matter of this Treaty, and shall be carried out on the basis of full respect for the sovereignty of States Parties and in the least intrusive manner possible consistent with the effective and timely accomplishment of their objectives. Each State Party shall refrain from any abuse of the right of verification.

3. Each State Party undertakes in accordance with this Treaty to cooperate, through its National Authority established pursuant to article III, paragraph 4, with the Organization and with other States Parties to facilitate the verification of compliance with this Treaty by, *inter alia*:

- (a) Establishing the necessary facilities to participate in these verification measures and establishing the necessary communication;
- (b) Providing data obtained from national stations that are part of the International Monitoring System;
- (c) Participating, as appropriate, in a consultation and clarification process;
- (d) Permitting the conduct of on-site inspections; and
- (e) Participating, as appropriate, in confidence-building measures.

4. All States Parties, irrespective of their technical and financial capabilities, shall enjoy the equal right of verification and assume the equal obligation to accept verification.

5. For the purposes of this Treaty, no State Party shall be precluded from using information obtained by national technical means of verification in a manner consistent with generally recognized principles of international law, including that of respect for the sovereignty of States.

6. Without prejudice to the right of States Parties to protect sensitive installations, activities or locations not related to this Treaty, States Parties shall not interfere with elements of the verification regime of this Treaty or with national technical means of verification operating in accordance with paragraph 5.

7. Each State Party shall have the right to take measures to protect sensitive installations and to prevent disclosure of confidential information and data not related to this Treaty.

8. Moreover, all necessary measures shall be taken to protect the confidentiality of any information related to civil and military activities and facilities obtained during verification activities.

9. Subject to paragraph 8, information obtained by the Organization through the verification regime established by this Treaty shall be made available to all States Parties in accordance with the relevant provisions of this Treaty and the Protocol.

10. The provisions of this Treaty shall not be interpreted as restricting the international exchange of data for scientific purposes.

11. Each State Party undertakes to cooperate with the Organization and with other States Parties in the improvement of the verification regime, and in the examination of the verification potential of additional monitoring technologies such as electromagnetic pulse monitoring or satellite monitoring, with a view to developing, when appropriate, specific measures to enhance the efficient and cost-effective verification of this Treaty. Such measures shall, when agreed, be incorporated in existing provisions in this Treaty, the Protocol or as additional sections of the Protocol, in accordance with article VII, or, if appropriate, be reflected in the operational manuals in accordance with article II, paragraph 44.

12. The States Parties undertake to promote cooperation among themselves to facilitate and participate in the fullest possible exchange relating to technologies used in the verification of this Treaty in order to enable all States Parties to strengthen their national implementation of verification measures and to benefit from the application of such technologies for peaceful purposes.

13. The provisions of this Treaty shall be implemented in a manner which avoids hampering the economic and technological development of the States Parties for further development of the application of atomic energy for peaceful purposes.

#### *Verification responsibilities of the Technical Secretariat*

14. In discharging its responsibilities in the area of verification specified in this Treaty and the Protocol, in cooperation with the States Parties the Technical Secretariat shall, for the purpose of this Treaty:

(a) Make arrangements to receive and distribute data and reporting products relevant to the verification of this Treaty in accordance with its provisions, and to maintain a global communications infrastructure appropriate to this task;

(b) Routinely through its International Data Centre, which shall in principle be the focal point within the Technical Secretariat for data storage and data processing:

- (i) Receive and initiate requests for data from the International Monitoring System;
- (ii) Receive data, as appropriate, resulting from the process of consultation and clarification, from on-site inspections, and from confidence-building measures; and
- (iii) Receive other relevant data from States Parties and international organizations in accordance with this Treaty and the Protocol;

(c) Supervise, coordinate and ensure the operation of the International Monitoring System and its component elements, and of the International Data Centre, in accordance with the relevant operational manuals;

(d) Routinely process, analyse and report on International Monitoring System data according to agreed procedures so as to permit the effective international verification of this Treaty and to contribute to the early resolution of compliance concerns;

(e) Make available all data, both raw and processed, and any reporting products, to all States Parties, each State Party taking responsibility for the use of International Monitoring System data in accordance with article 11, paragraph 7, and with paragraph 8 and 13 of this article;

(f) Provide to all States Parties equal, open, convenient and timely access to all stored data;

(g) Store all data, both raw and processed, and reporting products;

(h) Coordinate and facilitate requests for additional data from the International Monitoring System;

(i) Coordinate requests for additional data from one State Party to another State Party;

(j) Provide technical assistance in, and support for, the installation and operation of monitoring facilities and respective communication means, where such assistance and support are required by the State concerned;

(k) Make available to any State Party, upon its request, techniques utilized by the Technical Secretariat and its International Data Centre in compiling, storing, processing, analyzing and reporting on data from the verification regime; and

(l) Monitor, assess and report on the overall performance of the International Monitoring System and of the International Data Centre.

15. The agreed procedures to be used by the Technical Secretariat in discharging the verification responsibilities referred to in paragraph 14 and detailed in the Protocol shall be elaborated in the relevant operational manuals.

### *B. The International Monitoring System*

16. The International Monitoring System shall comprise facilities for seismological monitoring, radionuclide monitoring including certified laboratories, hydroacoustic monitoring, infrasound monitoring, and respective means of communication, and shall be supported by the International Data Centre of the Technical Secretariat.

17. The International Monitoring System shall be placed under the authority of the Technical Secretariat. All monitoring facilities of the International Monitoring System shall be owned and operated by the States hosting or otherwise taking responsibility for them in accordance with the Protocol.

18. Each State Party shall have the right to participate in the international exchange of data and to have access to all data made available to the International Data Centre. Each State Party shall cooperate with the International Data Centre through its National Authority.

### *Funding the International Monitoring System*

19. For facilities incorporated into the International Monitoring System and specified in tables 1-A, 2-A, 3 and 4 of annex 1 to the Protocol, and for their functioning, to the extent that such facilities are agreed by the relevant State and the Organization to provide data to the International Data Centre in accordance with the technical requirements of the Protocol and relevant operational manuals, the Organization, as specified in agreements or arrangements pursuant to part I, paragraph 4, of the Protocol, shall meet the costs of:

(a) Establishing any new facilities and upgrading existing facilities, unless the State responsible for such facilities meets these costs itself;

(b) Operating and maintaining International Monitoring System facilities, including facility physical security if appropriate, and application of agreed data authentication procedures;

(c) Transmitting International Monitoring System data (raw or processed) to the International Data Centre by the most direct and cost-effective means available, including, if necessary, via appropriate communications nodes, from monitoring stations, laboratories, analytical facilities or from national data centres; or such data (including samples where appropriate) to laboratory and analytical facilities from monitoring stations; and

(d) Analysing samples on behalf of the Organization.

20. For auxiliary network seismic stations specified in Table 1-B of Annex 1 to the Protocol the Organization, as specified in agreements or arrangements pursuant to Part I, paragraph 4, of the Protocol, shall meet the costs only of:

(a) Transmitting data to the International Data Centre;

(b) Authenticating data from such stations;

(c) Upgrading stations to the required technical standard, unless the State responsible for such facilities meets these costs itself;

(d) If necessary, establishing new stations for the purposes of this Treaty where no appropriate facilities currently exist, unless the State responsible for such facilities meets these costs itself; and

(e) Any other costs related to the provision of data required by the Organization as specified in the relevant operational manuals.

21. The Organization shall also meet the cost of provision to each State Party of its requested selection from the standard range of International Data Centre reporting products and services, as specified in Part I, section F, of the Protocol. The cost of preparation and transmission of any additional data or products shall be met by the requesting State Party.

22. The agreements, or, if appropriate, arrangements concluded with States Parties or States hosting or otherwise taking responsibility for facilities of the International Monitoring System shall contain provisions for meeting these costs. Such provisions may include modalities whereby a State Party meets any of the costs referred to in paragraphs 19 (a) and 20 (c) and (d) for facilities which it hosts or for which it is responsible, and is compensated by an appropriate reduction in its assessed financial contribution to the Organization. Such a reduction shall not exceed 50 per cent of the annual assessed financial contribution of a State Party, but may be spread over successive years. A State Party may share

such reduction with another State Party by agreement or arrangement between themselves and with the concurrence of the Executive Council. The agreements or arrangements referred to in this paragraph shall be approved in accordance with article II, paragraphs 26 (h) and 38 (i).

### *Changes to the International Monitoring System*

23. Any measures referred to in paragraph 11 affecting the International Monitoring System by means of addition or deletion of a monitoring technology shall, when agreed, be incorporated into this Treaty and the Protocol pursuant to article VII, paragraphs 1 to 6.

24. The following changes to the International Monitoring System, subject to the agreement of those States directly affected, shall be regarded as matters of an administrative or technical nature pursuant to article VII, paragraphs 7 and 8:

(a) Changes to the number of facilities specified in the Protocol for a given monitoring technology; and

(b) Changes to other details for particular facilities as reflected in the tables of annex 1 to the Protocol (including, inter alia, State responsible for the facility; location; name of facility; type of facility; and attribution of a facility between the primary and auxiliary seismic networks).

If the Executive Council recommends, pursuant to article VII, paragraph 8 (d), that such changes be adopted, it shall as a rule also recommend pursuant to article VII, paragraph 8 (g), that such changes enter into force upon notification by the Director-General of their approval.

25. The Director-General, in submitting to the Executive Council and States Parties information and evaluation in accordance with article VII, paragraph 8 (b), shall include in the case of any proposal made pursuant to paragraph 24:

(a) A technical evaluation of the proposal;

(b) A statement on the administrative and financial impact of the proposal; and

(c) A report on consultations with States directly affected by the proposal, including indication of their agreement.

### *Temporary Arrangements*

26. In cases of significant or irretrievable breakdown of a monitoring facility specified in the tables of annex 1 to the Protocol, or in order to cover other temporary reductions of monitoring coverage, the Director-General shall, in consultation and agreement with those States directly affected, and with the approval of the Executive Council, initiate temporary arrangements of no more than one year's duration, renewable if necessary by agreement of the Executive Council and of the States directly affected for another year. Such arrangements shall not cause the number of operational facilities of the International Monitoring System to exceed the number specified for the relevant network; and shall be conducted within the budget of the Organization. The Director-General shall furthermore take steps to rectify the situation and make proposals for its permanent resolution. The Director-General shall notify all States Parties of any decision taken pursuant to this paragraph.



### *Cooperating National Facilities*

27. States Parties may also separately establish cooperative arrangements with the Organization, in order to make available to the International Data Centre supplementary data from national monitoring stations that are not formally part of the International Monitoring System.

28. Such cooperative arrangements may be established as follows:

(a) Upon request by a State Party, and at the expense of that State, the Technical Secretariat shall take the steps required to certify that a given monitoring facility meets the technical and operational requirements specified in the relevant operational manuals for an International Monitoring System facility, and make arrangements for the authentication of its data. Subject to the agreement of the Executive Council, the Technical Secretariat shall then formally designate such a facility as a cooperating national facility. The Technical Secretariat shall take the steps required to revalidate its certification as appropriate;

(b) The Technical Secretariat shall maintain a current list of cooperating national facilities and shall distribute it to all States Parties; and

(c) The International Data Centre shall call upon data from cooperating national facilities, if so requested by a State Party, for the purposes of facilitating consultation and clarification and the consideration of on-site inspection requests, data transmission costs being borne by that State Party.

The conditions under which supplementary data from such facilities are made available, and under which the International Data Centre may request further or expedited reporting, or clarifications, shall be elaborated in the operational manual for the respective monitoring network.

### *C. Consultation and clarification*

29. Without prejudice to the right of any State Party to request an on-site inspection, States Parties should, whenever possible, first make every effort to clarify and resolve, among themselves or with or through the Organization, any matter which may cause concern about possible non-compliance with the basic obligations of this Treaty.

30. A State Party that receives a request pursuant to paragraph 29 directly from another State Party shall provide the clarification to the requesting State Party as soon as possible, but in any case no later than 48 hours after the request. The requesting and requested States Parties may keep the Executive Council and the Director-General informed of the request and the response.

31. A State Party shall have the right to request the Director-General to assist in clarifying any matter which may cause concern about possible non-compliance with the basic obligations of this Treaty. The Director-General shall provide appropriate information in the possession of the Technical Secretariat relevant to such a concern. The Director-General shall inform the Executive Council of the request by the requesting State Party.

32. A State Party shall have the right to request the Executive Council to obtain clarification from another State Party on any matter which may cause concern about possible non-compliance with the basic obligations of this Treaty. In such a case, the following shall apply:

(a) The Executive Council shall forward the request for clarification to the requested State Party through the Director-General no later than 24 hours after its receipt;

(b) The requested State Party shall provide the clarification to the Executive Council as soon as possible, but in any case no later than 48 hours after receipt of the request;

(c) The Executive Council shall take note of the clarification and forward it to the requesting State Party no later than 24 hours after its receipt;

(d) If the requesting State Party deems the clarification to be inadequate, it shall have the right to request the Executive Council to obtain further clarification from the requested State Party.

The Executive Council shall inform without delay all other States Parties about any request for clarification pursuant to this paragraph as well as any response provided by the requested State Party.

33. If the requesting State Party considers the clarification obtained under paragraph 32 (d) to be unsatisfactory, it shall have the right to request a meeting of the Executive Council in which States Parties involved that are not members of the Executive Council shall be entitled to take part. At such a meeting, the Executive Council shall consider the matter and may recommend any measure in accordance with Article V.

#### D. *On-site inspections*

##### *Request for an on-site inspection*

34. Each State Party has the right to request an on-site inspection in accordance with the provisions of this article and Part II of the Protocol in the territory or in any other place under the jurisdiction or control of any State Party, or in any area beyond the jurisdiction or control of any State.

35. The sole purpose of an on-site inspection shall be to clarify whether a nuclear weapon test explosion or any other nuclear explosion has been carried out in violation of article I and, to the extent possible, to gather any facts which might assist in identifying any possible violator.

36. The requesting State Party shall be under the obligation to keep the on-site inspection request within the scope of this Treaty and to provide in the request information in accordance with paragraph 37. The requesting State Party shall refrain from unfounded or abusive inspection requests.

37. The on-site inspection request shall be based on information collected by the International Monitoring System, on any relevant technical information obtained by national technical means of verification in a manner consistent with generally recognized principles of international law, or on a combination thereof. The request shall contain information pursuant to Part II, paragraph 41, of the Protocol.

38. The requesting State Party shall present the on-site inspection request to the Executive Council and at the same time to the Director-General for the latter to begin immediate processing.

### *Follow-up After Submission of an On-Site Inspection Request*

39. The Executive Council shall begin its consideration immediately upon receipt of the on-site inspection request.

40. The Director-General, after receiving the on-site inspection request, shall acknowledge receipt of the request to the requesting State Party within two hours and communicate the request to the State Party sought to be inspected within six hours. The Director-General shall ascertain that the request meets the requirements specified in Part II, paragraph 41, of the Protocol, and, if necessary, shall assist the requesting State Party in filing the request accordingly, and shall communicate the request to the Executive Council and to all other States Parties within 24 hours.

41. When the on-site inspection request fulfils the requirements, the Technical Secretariat shall begin preparations for the on-site inspection without delay.

42. The Director-General, upon receipt of an on-site inspection request referring to an inspection area under the jurisdiction or control of a State Party, shall immediately seek clarification from the State Party sought to be inspected in order to clarify and resolve the concern raised in the request.

43. A State Party that receives a request for clarification pursuant to paragraph 42 shall provide the Director-General with explanations and with other relevant information available as soon as possible, but no later than 72 hours after receipt of the request for clarification.

44. The Director-General, before the Executive Council takes a decision on the on-site inspection request, shall transmit immediately to the Executive Council any additional information available from the International Monitoring System or provided by any State Party on the event specified in the request, including any clarification provided pursuant to paragraphs 42 and 43, as well as any other information from within the Technical Secretariat that the Director-General deems relevant or that is requested by the Executive Council.

45. Unless the requesting State Party considers the concern raised in the on-site inspection request to be resolved and withdraws the request, the Executive Council shall take a decision on the request in accordance with paragraph 46.

### *Executive Council Decisions*

46. The Executive Council shall take a decision on the on-site inspection request no later than 96 hours after receipt of the request from the requesting State Party. The decision to approve the on-site inspection shall be made by at least 30 affirmative votes of members of the Executive Council. If the Executive Council does not approve the inspection, preparations shall be stopped and no further action on the request shall be taken.

47. No later than 25 days after the approval of the on-site inspection in accordance with paragraph 46, the inspection team shall transmit to the Executive Council, through the Director-General, a progress inspection report. The continuation of the inspection shall be considered approved unless the Executive Council, no later than 72 hours after receipt of the progress inspection re-

port, decides by a majority of all its members not to continue the inspection. If the Executive Council decides not to continue the inspection. If the Executive Council decides not to continue the inspection, the inspection shall be terminated, and the inspection team shall leave the inspection area and the territory of the inspected State Party as soon as possible in accordance with Part II, paragraphs 109 and 110, of the Protocol.

48. In the course of the on-site inspection, the inspection team may submit to the Executive Council, through the Director-General, a proposal to conduct drilling. The Executive Council shall take a decision on such a proposal no later than 72 hours after receipt of the proposal. The decision to approve drilling shall be made by a majority of all members of the Executive Council.

49. The inspection team may request the Executive Council, through the Director-General, to extend the inspection duration by a maximum of 70 days beyond the 60-day time frame specified in Part II, paragraph 4, of the Protocol, if the inspection team considers such an extension essential to enable it to fulfil its mandate. The inspection team shall indicate in its request which of the activities and techniques listed in Part II, paragraph 69, of the Protocol it intends to carry out during the extension period. The Executive Council shall take a decision on the extension request no later than 72 hours after receipt of the request. The decision to approve an extension of the inspection duration shall be made by a majority of all members of the Executive Council.

50. Any time following the approval of the continuation of the on-site inspection in accordance with paragraph 47, the inspection team may submit to the Executive Council, through the Director-General, a recommendation to terminate the inspection. Such a recommendation shall be considered approved unless the Executive Council, no later than 72 hours after receipt of the recommendation, decides by a two-thirds majority of all its members not to approve the termination of the inspection. In case of termination of the inspection, the inspection team shall leave the inspection area and the territory of the inspected State Party as soon as possible in accordance with Part II, paragraphs 109 and 110, of the Protocol.

51. The requesting State Party and the State Party sought to be inspected may participate in the deliberations of the Executive Council on the on-site inspection request without voting. The requesting State Party and the inspected State Party may also participate without voting in any subsequent deliberations of the Executive Council related to the inspection.

52. The Director-General shall notify all States Parties within 24 hours about any decision by and reports, proposals, requests and recommendations to the Executive Council pursuant to paragraphs 46 to 50.

#### *Follow-up After Executive Council Approval of an On-Site Inspection*

53. An on-site inspection approved by the Executive Council shall be conducted without delay by an inspection team designated by the Director-General and in accordance with the provisions of this Treaty and the Protocol. The inspection team shall arrive at the point of entry no later than six days following the receipt by the Executive Council of the on-site inspection request from the requesting State Party.

54. The Director-General shall issue an inspection mandate for the conduct of the on-site inspection. The inspection mandate shall contain the information specified in Part II, paragraph 42, of the Protocol.

55. The Director-General shall notify the inspected State Party of the inspection no less than 24 hours before the planned arrival of the inspection team at the point of entry, in accordance with Part II, paragraph 43, of the Protocol.

### *The Conduct of an On-Site Inspection*

56. Each State Party shall permit the Organization to conduct an on-site inspection on its territory or at places under its jurisdiction or control in accordance with the provisions of this Treaty and the Protocol. However, no State Party shall have to accept simultaneous on-site inspections on its territory or at places under its jurisdiction or control.

57. In accordance with the provisions of this Treaty and the Protocol, the inspected State Party shall have:

(a) The right and the obligation to make every reasonable effort to demonstrate its compliance with this Treaty and, to this end, to enable the inspection team to fulfil its mandate;

(b) The right to take measures it deems necessary to protect national security interests and to prevent disclosure of confidential information not related to the purpose of the inspection;

(c) The obligation to provide access within the inspection area for the sole purpose of determining facts relevant to the purpose of the inspection, taking into account subparagraph (b) and any constitutional obligations it may have with regard to proprietary rights or searches and seizures;

(d) The obligation not to invoke this paragraph or Part II, paragraph 88, of the Protocol to conceal any violation of its obligations under article I; and

(e) The obligation not to impede the ability of the inspection team to move within the inspection area and to carry out inspection activities in accordance with this Treaty and the Protocol.

Access, in the context of an on-site inspection, means both the physical access of the inspection team and the inspection equipment to, and the conduct of inspection activities within, the inspection area.

58. The on-site inspection shall be conducted in the least intrusive manner possible, consistent with the efficient and timely accomplishment of the inspection mandate, and in accordance with the procedures set forth in the Protocol. Wherever possible, the inspection team shall begin with the least intrusive procedures and then proceed to more intrusive procedures only as it deems necessary to collect sufficient information to clarify the concern about possible non-compliance with this Treaty. The inspectors shall seek only the information and data necessary for the purpose of the inspection and shall seek to minimize interference with normal operations of the inspected State Party.

59. The inspected State Party shall assist the inspection team throughout the on-site inspection and facilitate its task.

60. If the inspected State Party, acting in accordance with Part II, paragraphs 86 to 96, of the Protocol, restricts access within the inspection area, it shall make every reasonable effort in consultations with the inspection team to demonstrate through alternative means its compliance with this Treaty.

## *Observer*

61. With regard to an observer, the following shall apply:

(a) The requesting State Party, subject to the agreement of the inspected State Party, may send a representative, who shall be a national either of the requesting State Party or of a third State Party, to observe the conduct of the on-site inspection;

(b) The inspected State Party shall notify its acceptance or non-acceptance of the proposed observer to the Director-General within 12 hours after approval of the on-site inspection by the Executive Council;

(c) In case of acceptance, the inspected State Party shall grant access to the observer in accordance with the Protocol;

(d) The inspected State Party shall, as a rule, accept the proposed observer, but if the inspected State Party exercises a refusal, that fact shall be recorded in the inspection report.

There shall be no more than three observers from an aggregate of requesting States Parties.

## *Reports of an On-Site Inspection*

62. Inspection reports shall contain:

(a) A description of the activities conducted by the inspection team;

(b) The factual findings of the inspection team relevant to the purpose of the inspection;

(c) An account of the cooperation granted during the on-site inspection;

(d) A factual description of the extent of the access granted, including the alternative means provided to the team, during the on-site inspection; and

(e) Any other details relevant to the purpose of the inspection.

Differing observations made by inspectors may be attached to the report.

63. The Director-General shall make draft inspection reports available to the inspected State Party. The inspected State Party shall have the right to provide the Director-General within 48 hours with its comments and explanations, and to identify any information and data which, in its view, are not related to the purpose of the inspection and should not be circulated outside the Technical Secretariat. The Director-General shall consider the proposals for changes to the draft inspection report made by the inspected State Party and shall wherever possible incorporate them. The Director-General shall also annex the comments and explanations provided by the inspected State Party to the inspection report.

64. The Director-General shall promptly transmit the inspection report to the requesting State Party, the inspected State Party, the Executive Council and to all other States Parties. The Director-General shall further transmit promptly to the Executive Council and to all other States Parties any results of sample analysis in designated laboratories in accordance with Part II, paragraph 104, of the Protocol, relevant data from the International Monitoring System, the assessments of the requesting and inspected States Parties, as well as any other information that the Director-General deems relevant. In the case of the progress inspection report referred to in paragraph 47, the Director-General shall transmit the report to the Executive Council within the time-frame specified in that paragraph.

65. The Executive Council, in accordance with its powers and functions, shall review the inspection report and any material provided pursuant to paragraph 64, and shall address any concerns as to:

- (a) Whether a non-compliance with this Treaty has occurred; and
- (b) Whether the right to request an on-site inspection has been abused.

66. If the Executive Council reaches the conclusion, in keeping with its powers and functions, that further action may be necessary with regard to paragraph 65, it shall take the appropriate measures in accordance with article V.

#### *Frivolous or Abusive On-Site Inspection Requests*

67. If the Executive Council does not approve the on-site inspection on the basis that the on-site inspection request is frivolous or abusive, or if the inspection is terminated for the same reasons, the Executive Council shall consider and decide on whether to implement appropriate measures to redress the situation, including the following:

- (a) Requiring the requesting State Party to pay for the cost of any preparations made by the Technical Secretariat;
- (b) Suspending the right of the requesting State Party to request an on-site inspection for a period of time, as determined by the Executive Council; and
- (c) Suspending the right of the requesting State Party to serve on the Executive Council for a period of time.

#### *E. Confidence-building measures*

68. In order to:

- (a) Contribute to the timely resolution of any compliance concerns arising from possible misinterpretation of verification data relating to chemical explosions; and
- (b) Assist in the calibration of the stations that are part of the component networks of the International Monitoring System each State Party undertakes to cooperate with the Organization and with other States Parties in implementing relevant measures as set out in Part III of the Protocol.

### *Article V*

#### MEASURES TO REDRESS A SITUATION AND TO ENSURE COMPLIANCE, INCLUDING SANCTIONS

1. The Conference, taking into account, inter alia, the recommendations of the Executive Council, shall take the necessary measures, as set forth in paragraphs 2 and 3, to ensure compliance with this Treaty and to redress and remedy any situation which contravenes the provisions of this Treaty.

2. In cases where a State Party has been requested by the Conference or the Executive Council to redress a situation raising problems with regard to its compliance and fails to fulfil the request within the specified time, the Conference may, inter alia, decide to restrict or suspend the State Party from the exercise of its rights and privileges under this Treaty until the Conference decides otherwise.

3. In cases where damage to the object and purpose of this Treaty may result from non-compliance with the basic obligations of this Treaty, the Conference may recommend to States Parties collective measures which are in conformity with international law.

4. The Conference, or alternatively, if the case is urgent, the Executive Council, may bring the issue, including relevant information and conclusions, to the attention of the United Nations.

## *Article VI*

### SETTLEMENT OF DISPUTES

1. Disputes that may arise concerning the application or the interpretation of this Treaty shall be settled in accordance with the relevant provisions of this Treaty and in conformity with the provisions of the Charter of the United Nations.

2. When a dispute arises between two or more States Parties, or between one or more States Parties and the Organization, relating to the application or interpretation of this Treaty, the parties concerned shall consult together with a view to the expeditious settlement of the dispute by negotiation or by other peaceful means of the parties' choice, including recourse to appropriate organs of this Treaty and, by mutual consent, referral to the International Court of Justice in conformity with the Statute of the court. The parties involved shall keep the Executive Council informed of actions being taken.

3. The Executive Council may contribute to the settlement of a dispute that may arise concerning the application or interpretation of this Treaty by whatever means it deems appropriate, including offering its good offices, calling upon the States Parties to a dispute to seek a settlement through a process of their own choice, bringing the matter to the attention of the Conference and recommending a time limit for any agreed procedure.

4. The Conference shall consider questions related to disputes raised by States Parties or brought to its attention by the Executive Council. The Conference shall, as it finds necessary, establish or entrust organs with tasks related to the settlement of these disputes in conformity with article II, paragraph 26 (j).

5. The Conference and the Executive Council are separately empowered, subject to authorization from the General Assembly of the United Nations, to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of the activities of the Organization. An agreement between the Organization and the United Nations shall be concluded for this purpose in accordance with article II, paragraph 38 (h).

6. This article is without prejudice to articles IV and V.

## *Article VII*

### AMENDMENTS

1. At any time after the entry into force of this Treaty, any State Party may propose amendments to this Treaty, the Protocol, or the annexes to the Protocol. Any State Party may also propose changes, in accordance with paragraph 7, to the Protocol or the annexes thereto. Proposals for amendments shall



be subject to the procedures in paragraphs 2 to 6. Proposals for changes, in accordance with paragraph 7, shall be subject to the procedure in paragraph 8.

2. The proposed amendment shall be considered and adopted only by an Amendment Conference.

3. Any proposal for an amendment shall be communicated to the Director-General, who shall circulate it to all States Parties and the Depositary and seek the views of the States Parties on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Director-General no later than 30 days after its circulation that they support further consideration of the proposal, the Director-General shall convene an Amendment Conference to which all States Parties shall be invited.

4. The Amendment Conference shall be held immediately following a regular session of the Conference unless all States Parties that support the convening of an Amendment Conference request that it be held earlier. In no case shall an Amendment Conference be held less than 60 days after the circulation of the proposed amendment.

5. Amendments shall be adopted by the Amendment Conference by a positive vote of a majority of the States Parties with no State Party casting a negative vote.

6. Amendments shall enter into force for all States Parties 30 days after deposit of the instruments of ratification or acceptance by all those States Parties casting a positive vote at the Amendment Conference.

7. In order to ensure the viability and effectiveness of this Treaty, Parts I and III of the Protocol and annexes 1 and 2 to the Protocol shall be subject to changes in accordance with paragraph 8, if the proposed changes are related only to matters of an administrative or technical nature. All other provisions of the Protocol and the Annexes thereto shall not be subject to changes in accordance with paragraph 8.

8. Proposed changes referred to in paragraph 7 shall be made in accordance with the following procedures:

(a) The text of the proposed changes shall be transmitted together with the necessary information to the Director-General. Additional information for the evaluation of the proposal may be provided by any State Party and the Director-General. The Director-General shall promptly communicate any such proposals and information to all States Parties, the Executive Council and the Depositary;

(b) No later than 60 days after its receipt, the Director-General shall evaluate the proposal to determine all its possible consequences for the provisions of this Treaty and its implementation and shall communicate any such information to all States Parties and the Executive Council;

(c) The Executive Council shall examine the proposal in the light of all information available to its, including whether the proposal fulfils the requirements of paragraph 7. No later than 90 days after its receipt, the Executive Council shall notify its recommendation, with appropriate explanations, to all States Parties for consideration. States Parties shall acknowledge receipt within 10 days;

(d) If the Executive Council recommends to all States Parties that the proposal be adopted, it shall be considered approved if no State Party objects to it within 90 days after receipt of the recommendation. If the Executive Council

recommends that the proposal be rejected, it shall be considered rejected if no State Party objects to the rejection within 90 days after receipt of the recommendation;

(e) If a recommendation of the Executive Council does not meet with the acceptance required under subparagraph (d), a decision on the proposal, including whether it fulfils the requirements of paragraph 7, shall be taken as a matter of substance by the Conference at its next session;

(f) The Director-General shall notify all States Parties and the Depositary of any decision under this paragraph;

(g) Changes approved under this procedure shall enter into force for all States Parties 180 days after the date of notification by the Director-General of their approval unless another time period is recommended by the Executive Council or decided by the Conference.

### *Article VIII*

#### REVIEW OF THE TREATY

1. Unless otherwise decided by a majority of the States Parties, ten years after the entry into force of this Treaty a Conference of the States Parties shall be held to review the operation and effectiveness of this Treaty, with a view to assuring itself that the objectives and purposes in the preamble and the provisions of the Treaty are being realized. Such review shall take into account any new scientific and technological developments relevant to this Treaty. On the basis of a request by any State Party, the Review Conference shall consider the possibility of permitting the conduct of underground nuclear explosions for peaceful purposes. If the Review Conference decides by consensus that such nuclear explosions may be permitted, it shall commence work without delay, with a view to recommending to States Parties an appropriate amendment to this Treaty that shall preclude any military benefits of such nuclear explosions. Any such proposed amendment shall be communicated to the Director-General by any State Party and shall be dealt with in accordance with the provisions of article VII.

2. At intervals of ten years thereafter, further Review Conferences may be convened with the same objective, if the Conference so decides as a matter of procedure in the preceding year. Such Conferences may be convened after an interval of less than ten years if so decided by the Conference as a matter of substance.

3. Normally, any Review Conference shall be held immediately following the regular annual session of the Conference provided for in article II.

### *Article IX*

#### DURATION AND WITHDRAWAL

1. This Treaty shall be of unlimited duration.

2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests.

3. Withdrawal shall be effected by giving notice six months in advance to all other States Parties, the Executive Council, the Depositary and the United Nations Security Council. Notice of withdrawal shall include a statement of the extraordinary event or events which a State Party regards as jeopardizing its supreme interests.

### *Article X*

#### STATUS OF THE PROTOCOL AND THE ANNEXES

The annexes to this Treaty, the Protocol and the annexes to the Protocol form an integral part of the Treaty. Any reference to this Treaty includes the annexes to this Treaty, the Protocol and the annexes to the Protocol.

### *Article XI*

#### SIGNATURE

This Treaty shall be open to all States for signature before its entry into force.

### *Article XII*

#### RATIFICATION

This Treaty shall be subject to ratification by States signatories according to their respective constitutional processes.

### *Article XIII*

#### ACCESSION

Any State which does not sign this Treaty before its entry into force may accede to it at any time thereafter.

### *Article XIV*

#### ENTRY INTO FORCE

1. This Treaty shall enter into force 180 days after the date of deposit of the instruments of ratification by all States listed in annex 2 to this Treaty, but in no case earlier than two years after its opening for signature.

2. If this Treaty has not entered into force three years after the date of the anniversary of its opening for signature, the Depositary shall convene a Conference of the States that have already deposited their instruments of ratification upon the request of a majority of those States. That Conference shall examine the extent to which the requirement set out in paragraph 1 has been met and

shall consider and decide by consensus what measures consistent with international law may be undertaken to accelerate the ratification process in order to facilitate the early entry into force of this Treaty.

3. Unless otherwise decided by the Conference referred to in paragraph 2 or other such conferences, this process shall be repeated at subsequent anniversaries of the opening for signature of this Treaty, until its entry into force.

4. All States Signatories shall be invited to attend the Conference referred to in paragraph 2 and any subsequent conferences as referred to in paragraph 3, as observers.

5. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the 30<sup>th</sup> day following the date of deposit of their instruments of ratification or accession.

### *Article XV*

#### RESERVATIONS

The articles of the annexes to this Treaty shall not be subject to reservations. The provisions of the Protocol to this Treaty and the annexes to the Protocol shall not be subject to reservations incompatible with the object and purpose of this Treaty.

### *Article XVI*

#### DEPOSITARY

1. The Secretary-General of the United Nations shall be the Depositary of this Treaty and shall receive signatures, instruments of ratification and instruments of accession.

2. The Depositary shall promptly inform all States signatories and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of the entry into force of this Treaty and of any amendments and changes thereto, and the receipt of other notices.

3. The Depositary shall send duly certified copies of this Treaty to the Governments of the States signatories and acceding States.

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

### *Article XVIII*

#### AUTHENTIC TEXTS

This Treaty, 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.

## ANNEX 1 TO THE TREATY

### LIST OF STATES PURSUANT TO ARTICLE II, PARAGRAPH 28

#### *Africa*

Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Togo, Tunisia, Uganda, United Republic of Tanzania, Zaire, Zambia, Zimbabwe.

#### *Eastern Europe*

Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Poland, Republic of Moldova, Romania, Russian Federation, Slovakia, Slovenia, the former Yugoslav Republic of Macedonia, Ukraine, Yugoslavia.

#### *Latin America and the Caribbean*

Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

#### *Middle East and South Asia*

Afghanistan, Bahrain, Bangladesh, Bhutan, India, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Maldives, Nepal, Oman, Pakistan, Qatar, Saudi Arabia, Sri Lanka, Syrian Arab Republic, Tajikistan, Turkmenistan, United Arab Emirates, Uzbekistan, Yemen.

#### *North America and Western Europe*

Andorra, Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Holy See, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

#### *Southeast Asia, the Pacific and the Far East*

Australia, Brunei Darussalam, Cambodia, China, Cook Islands, Democratic People's Republic of Korea, Fiji, Indonesia, Japan, Kiribati, Lao People's Democratic Republic, Malaysia, Marshall Islands, Micronesia (Federated States of), Mongolia, Myanmar, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Thailand, Tonga, Tuvalu, Vanuatu, Viet Nam.

## ANNEX 2 TO THE TREATY

### LIST OF STATES PURSUANT TO ARTICLE XIV

List of States members of the Conference on Disarmament as at 18 June 1996 which formally participated in the work of the 1996 session of the Conference and which appear in table 1 of the International Atomic Energy Agency's April 1996 edition of "Nuclear Power Reactors in the World", and of States members of the Conference on Disarmament

as at 18 June 1996 which formally participated in the work of the 1996 session of the Conference and which appear in table 1 of the International Atomic Energy Agency's December 1995 edition of "Nuclear Research Reactors in the World":

Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Democratic People's Republic of Korea, Egypt, Finland, France, Germany, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Mexico, Netherlands, Norway, Pakistan, Peru, Poland, Romania, Republic of Korea, Russian Federation, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Viet Nam, Zaire.

## **Protocol to the Comprehensive Nuclear Test-Ban Treaty**

### **PART I**

#### **THE INTERNATIONAL MONITORING SYSTEM AND INTERNATIONAL DATA CENTRE FUNCTIONS**

##### **A. General provisions**

1. The International Monitoring System shall comprise monitoring facilities as set out in Article IV, paragraph 16, and respective means of communication.

2. The monitoring facilities incorporated into the International Monitoring System shall consist of those facilities specified in annex 1 to this Protocol. The International Monitoring System shall fulfil the technical and operational requirements specified in the relevant operational manuals.

3. The Organization, in accordance with article II, shall, in cooperation and consultation with the States Parties, with other States, and with international organizations as appropriate, establish and coordinate the operation and maintenance, and any future agreed modification or development of the International Monitoring System.

4. In accordance with appropriate agreements or arrangements and procedures, a State Party or other State hosting or otherwise taking responsibility for International Monitoring System facilities and the Technical Secretariat shall agree and cooperate in establishing, operating, upgrading, financing, and maintaining monitoring facilities, related certified laboratories and respective means of communication within areas under its jurisdiction or control or elsewhere in conformity with international law. Such cooperation shall be in accordance with the security and authentication requirements and technical specifications contained in the relevant operational manuals. Such a State shall give the Technical Secretariat authority to access a monitoring facility for checking equipment and communication links, and shall agree to make the necessary changes in the equipment and the operational procedures to meet agreed requirements. The Technical Secretariat shall provide to such States appropriate technical assistance as is deemed by the Executive Council to be required for the proper functioning of the facility as part of the International Monitoring System.

5. Modalities for such cooperation between the Organization and States Parties or States hosting or otherwise taking responsibility for facilities of the International Monitoring System shall be set out in agreements or arrangements as appropriate in each case.

##### **B. Seismological monitoring**

6. Each State Party undertakes to cooperate in an international exchange of seismological data to assist in the verification of compliance with this Treaty. This cooperation shall include the establishment and operation of a global network of primary and auxiliary seismological monitoring stations. These stations shall provide data in accordance with agreed procedures to the International Data Centre.

7. The network of primary stations shall consist of the 50 stations specified in table 1-A of annex 1 to this Protocol. These stations shall fulfil the technical and operational requirements specified in the Operational Manual for Seismological Monitoring and the International Exchange of Seismological Data. Uninterrupted data from the primary stations shall be transmitted, directly or through a national data center, on-line to the International Data Centre.

8. To supplement the primary network, an auxiliary network of 120 stations shall provide information, directly or thorough a national data center, to the International Data Centre upon request. The auxiliary stations to be used are listed in table 1-B of annex 1 to this Protocol. The auxiliary stations shall fulfil the technical and operational requirements specified in the Operational Manual for Seismological Monitoring and the International Exchange of Seismological Data. Data from the auxiliary stations may at any time be requested by the International Data Centre and shall be immediately available though on-line computer connections.

### *C. Radionuclide monitoring*

9. Each State Party undertakes to cooperate in an international exchange of data on radionuclides in the atmosphere to assist in the verification of compliance with this Treaty. This cooperation shall include the establishment and operation of a global network of radionuclide monitoring stations and certified laboratories. The network shall provide data in accordance with agreed procedures to the International Data Centre.

10. The network of stations to measure radionuclides in the atmosphere shall comprise an overall network of 80 stations, as specified in table 2-A of annex 1 to this Protocol. All stations shall be capable of monitoring for the presence of relevant particulate matter in the atmosphere. Forty of these stations shall also be capable of monitoring for the presence of relevant noble gases upon the entry into force of this Treaty. For this purpose the Conference, at its initial session, shall approve a recommendation by the Preparatory Commission as to which 40 stations from table 2-A of annex 1 to this Protocol shall be capable of noble gas monitoring. At its first regular annual session, the Conference shall consider and decide on a plan for implementing noble gas monitoring capability throughout the network. The Director-General shall prepare a report to the Conference on the modalities for such implementation. All monitoring stations shall fulfil the technical and operational requirements specified in the Operational Manual for Radionuclide Monitoring and the International Exchange of Radionuclide Data.

11. The network of radionuclide monitoring stations shall be supported by laboratories, which shall be certified by Technical Secretariat in accordance with the relevant operational manual for the performance, on contract to the Organization and on a fee-for-service basis, of the analysis of samples from radionuclide monitoring stations. Laboratories specified in table 2-B of annex 1 to this Protocol, and appropriately equipped, shall, as required, also be drawn upon by the Technical Secretariat to perform additional analysis of samples from radionuclide monitoring stations. With the agreement of the Executive Council, further laboratories may be certified by the Technical Secretariat to perform the routine analysis of samples from manual monitoring stations where necessary. All certified laboratories shall provide the results of such analysis to the International Data Centre, and in so doing shall fulfil the technical and operational requirements specified in the Operational Manual on Radionuclide Monitoring and the International Exchange of Radionuclide Data.

### *D. Hydroacoustic monitoring*

12. Each State Party undertakes to cooperate in an international exchange of hydroacoustic data to assist in the verification of compliance with this Treaty. This cooperation shall include the establishment and operation of a global network of hydroacoustic monitoring stations. These stations shall provide data in accordance with agreed procedures to the International Data Centre.

13. The network of hydroacoustic stations shall consist of the stations specified in table 3 of annex 1 to this Protocol, and shall comprise an overall network of six hydrophone and five T-phase stations. These stations shall fulfil the technical and operational requirements specified in the Operational Manual for Hydroacoustic Monitoring and the International Exchange of Hydroacoustic Data.

#### *E. Infrasound monitoring*

14. Each State Party undertakes to cooperate in an international exchange of infrasound data to assist in the verification of compliance with this Treaty. This cooperation shall include the establishment and operation of a global network of infrasound monitoring stations. These stations shall provide data in accordance with agreed procedures to the International Data Centre.

15. The network of infrasound stations shall consist of the stations specified in table 4 of annex 1 to this Protocol, and shall comprise an overall network of 60 stations. These stations fulfil the technical and operational requirements specified in the Operational Manual for Infrasound Monitoring and the International Exchange of Infrasound Data.

#### *F. International Data Centre functions*

16. The International Data Centre shall receive, collect, process, analyse, report on and achieve data from International Monitoring System facilities, including the results of analysis conducted at certified laboratories.

17. The procedures and standard event screening criteria to be used by the International Data Centre in carrying out its agreed functions, in particular for the production of standard reporting products and for the performance of a standard range of services for States Parties, shall be elaborated in the Operational Manual for the International Data Centre and shall be progressively developed. The procedures and criteria developed initially by the Preparatory Commission shall be approved by the Conference at its initial session.

#### *International Data Centre Standard Products*

18. The International Data Centre shall apply on a routine basis automatic processing methods and interactive human analysis to raw International Monitoring System data in order to produce and archive standard International Data Centre products on behalf of all States Parties. These products shall be provided at no cost to States Parties and shall be without prejudice to final judgments with regard to the nature of any event, which shall remain the responsibility of States Parties, and shall include:

(a) Integrated lists of all signals detected by the International Monitoring System, as well as standard event lists and bulletins, including the values and associated uncertainties calculated for each event located by the International Data Centre, based on a set of standard parameters;

(b) Standard screened event bulletins that result from the application to each event by the International Data Centre of standard event screening criteria, making use of the characterization parameters specified in annex 2 to this Protocol, with the objective of characterizing, highlighting in the standard event bulletin, and thereby screening out, events considered to be consistent with natural phenomena or non-nuclear, man-made phenomena. The standard event bulletin shall indicate numerically for each event the degree to which that event meets or does not meet the event screening criteria. In applying standard event screening, the International Data Centre shall progressively enhance its technical capabilities as experience is gained in the operation of the International Monitoring System;

(c) Executive summaries, which summarize the data acquired and archived by the International Data Centre, the products of the International Data Centre, and the performance and operational status of the International Monitoring System and International Data Centre; and



(d) Extracts or subsets of the standard International Data Centre products specified in subparagraphs (a) to (c), selected according to the request of an individual State Party.

19. The International Data Centre shall carry out, at no cost to States Parties, special studies to provide in-depth, technical review by expert analysis of data from the International Monitoring System, if requested by the Organization or by a State Party, to improve the estimated values for the standard signal and event parameters.

#### *International Data Centre Services to States Parties*

20. The International Data Centre shall provide States Parties with open, equal, timely and convenient access to all International Monitoring System data, raw or processed, all International Data Centre products, and all other International Monitoring System data in the archive of the International Data Centre or, through the International Data Centre, of International Monitoring System facilities. The methods for supporting data access and the provision of data shall include the following services:

(a) Automatic and regular forwarding to a State Party of the products of the International Data Centre or the selection by the State Party thereof, and, as requested, the selection by the State Party of International Monitoring System data;

(b) The provision of the data or products generated in response to ad hoc requests by States Parties for the retrieval from the International Data Centre and International Monitoring System facility archives of data and products, including interactive electronic access to the International Data Centre database; and

(c) Assisting individual States Parties, at their request and at no cost for reasonable efforts, with expert technical analysis of International Monitoring System data and other relevant data provided by the requesting State Party, in order to help the State Party concerned to identify the source of specific events. The output of any such technical analysis shall be considered a product of the requesting State Party, but shall be available to all States Parties.

The International Data Centre services specified in subparagraphs (a) and (b) shall be made available at no cost to each State Party. The volumes and formats of data shall be set out in the Operational Manual for the International Data Centre.

#### *National Event Screening*

21. The International Data Centre shall, if requested by a State Party, apply to any of its standard products, on a regular and automatic basis, national event screening criteria established by that State Party, and provide the results of such analysis to that State Party. This service shall be undertaken at no cost to the requesting State Party. The output of such national event screening processes shall be considered a product of the requesting State Party.

#### *Technical Assistance*

22. The International Data Centre shall, where required, provide technical assistance to individual States Parties:

(a) In formulating their requirements for selection and screening of data and products;

(b) By installing at the International Data Centre, at no cost to a requesting State Party for reasonable efforts, computer algorithms or software provided by that State Party to compute new signal and event parameters that are not included in the Operational Manual for the International Data Centre, the output being considered products of the requesting State Party; and

(c) By assisting States Parties to develop the capability to receive, process and analyse International Monitoring System data at a national data center.

23. The International Data Centre shall continuously monitor and report on the operational status of the International Monitoring System facilities, of communications links, and of its own processing systems. It shall provide immediate notification to those responsible should the operational performance of any component fail to meet agreed levels set out in the relevant operational manual.

## PART II

### ON-SITE INSPECTIONS

#### A. *General provisions*

1. The procedure in this part shall be implemented pursuant to the provisions for on-site inspections set out in article IV.

2. The on-site inspection shall be carried out in the area where the event that triggered the on-site inspection request occurred.

3. The area of on-site inspection shall be continuous and its size shall not exceed 1,000 square kilometers. There shall be no liner distance greater than 50 kilometres in any direction.

4. The duration of an on-site inspection shall not exceed 60 days from the date of the approval of the on-site inspection request in accordance with article IV, paragraph 46, but may be extended by a maximum of 70 days in accordance with article IV, paragraph 49.

5. If the inspection area specified in the inspection mandate extends to the territory or other place under the jurisdiction or control of more than one State Party, the provisions on on-site inspections shall, as appropriate, apply to each of the States Parties to which the inspection area extends.

6. In cases where the inspection area is under the jurisdiction or control of the inspected State Party but is located on the territory of another State Party or where the access from the point of entry to the inspection area requires transit through the territory of a State Party other than the inspected State Party, the inspected State Party shall exercise the rights and fulfil the obligations concerning such inspections in accordance with this Protocol. In such a case, the State Party on whose territory the inspection area is located shall facilitate the inspection and shall provide for the necessary support to enable the inspection team to carry out its tasks in a timely and effective manner. States Parties through whose territory transit is required to reach the inspection area shall facilitate such transit.

7. In cases where the inspection area is under the jurisdiction or control of the inspected State Party but is located on the territory of a State not Party to this Treaty, the inspected State Party shall take all necessary measures to ensure that the inspection can be carried out in accordance with this Protocol. A State Party that has under its jurisdiction or control one or more areas on the territory of a State not Party to this Treaty shall take all necessary measures to ensure acceptance by the State on whose territory the inspection area is located of inspectors and inspection assistants designated to that State Party. If an inspected State Party is unable to ensure access, it shall demonstrate that it took all necessary measures to ensure access.

8. In cases where the inspection area is located on the territory of a State Party but is under the jurisdiction or control of a State not Party to this Treaty, the State Party shall take all necessary measures required of an inspected State Party and a State Party on whose territory the inspection area is located, without prejudice to the rules and practices of international law, to ensure that the on-site inspection can be carried out in accordance with this Protocol. If the State Party is unable to ensure access to the inspection area, it shall demonstrate that it took all necessary measures to ensure access, without prejudice to the rules and practices of international law.

9. The size of the inspection team shall be kept to the minimum necessary for the proper fulfillment of the inspection mandate. The total number of members of the inspection team present on the territory of the inspected State Party at any given time, except during the conduct of drilling, shall not exceed 40 persons. No national of the requesting State Party or the inspected State Party shall be a member of the inspection team.

10. The Director-General shall determine the size of the inspection team and select its members from the list of inspectors and inspection assistants, taking into account the circumstances of particular request.

11. The inspected State Party shall provide for or arrange the amenities necessary for the inspection team, such as communication means, interpretation services, transportation, working space, lodging, meals, and medical care.

12. The inspected State Party shall be reimbursed by the Organization, in a reasonably short period of time after conclusion of the inspection, for all expenses, including those mentioned in paragraphs 11 and 49, related to the stay and functional activities of the inspection team on the territory of the inspected State Party.

13. Procedures for the implementation of on-site inspections shall be detailed in the Operational Manual for On-Site Inspections.

#### B. *Standing arrangements*

##### *Designation of inspectors and inspection assistants*

14. An inspection team may consist of inspectors and inspection assistants. An on-site inspection shall only be carried out by qualified inspectors specially designated for this function. They may be assisted by specially designated inspection assistants, such as technical and administrative personnel, aircrew and interpreters.

15. Inspectors and inspection assistants shall be notified for designation by the States Parties or, in the case of staff of the Technical Secretariat, by the Director-General, on the basis of their expertise and experience relevant to the purpose and functions of on-site inspections. The nominees shall be approved in advance by the States Parties in accordance with paragraph 18.

16. Each State Party, no later than 30 days after the entry into force of this Treaty for it, shall notify the Director-General of the names, dates of birth, sex, ranks, qualifications and professional experience of the persons proposed by the State Party for designation as inspectors and inspection assistants.

17. No later than 60 days after the entry into force of this Treaty, the Technical Secretariat shall communicate in writing to all States Parties an initial list of the names, nationalities, dates of birth, sex and ranks of the inspectors and inspection assistants proposed for designation by the Director-General and the States Parties, as well as a description of their qualifications and professional experience.

18. Each State Party shall immediately acknowledge receipt of the initial list of inspectors and inspection assistants proposed for designation. Any inspector or inspection assistant included in this list shall be regarded as accepted unless a State Party, no later than 30 days after acknowledgement of receipt of the list, declares its non-acceptance in writing. The State Party may include the reason for the objection. In the case of the non-acceptance, the proposed inspector or inspection assistant shall not undertake or participate in on-site inspection activities on the territory or in any other place under the jurisdiction or control of the State Party that has declared its non-acceptance. The Technical Secretariat shall immediately confirm receipt of the notification of objection.

19. Whenever additions or changes to the list of inspectors and inspection assistants are proposed by the Director-General of a State Party, replacement inspectors and inspection assistants shall be designated in the same manner as set forth with respect to the initial list. Each State Party shall promptly notify the Technical Secretariat if an inspector or inspection assistant nominated by it can no longer fulfil the duties of an inspector or inspection assistant.

20. The Technical Secretariat shall keep the list of inspectors and inspection assistants up to date and notify all States Parties of any additions or changes to the list.

21. A State Party requesting an on-site inspection may propose that an inspector from the list of inspectors and inspection assistants serve as its observer in accordance with Article IV, paragraph 61.

22. Subject to paragraph 23, a State Party shall have the right at any time to object to an inspector or inspection assistant who has already been accepted. It shall notify the Technical Secretariat of its objection in writing and may include the reason for the objection. Such objection shall come into effect 30 days after receipt of the notification by the Technical Secretariat. The Technical Secretariat shall immediately confirm receipt of the notification of the objection and inform the objecting and nominating States Parties of the date on which the inspector or inspection assistant shall cease to be designated for that State Party.

23. A State Party that has been notified of an inspection shall not seek the removal from the inspection team of any of the inspectors or inspection assistants named in the inspection mandate.

24. The number of inspectors and inspection assistants accepted by a State Party must be sufficient to allow for availability of appropriate numbers of inspectors and inspection assistants. If, in the opinion of the Director-General, the non-acceptance by a State Party of proposed inspectors or inspection assistants impedes the designation of a sufficient number of inspectors and inspection assistants or otherwise hampers the effective fulfillment of the purposes of an on-site inspection, the Director-General shall refer the issue to the Executive Council.

25. Each inspector included in the list of inspectors and inspection assistants shall receive relevant training. Such training shall be provided by the Technical Secretariat pursuant to the procedures specified in the Operational Manual for On-Site Inspections. The Technical Secretariat shall co-ordinate, in agreement with the States Parties, a schedule of training for the inspectors.

### *Privileges and Immunities*

26. Following acceptance of the initial list of inspectors and inspection assistants as provided for in paragraph 18 or as subsequently altered in accordance with paragraph 19, each State Party shall be obliged to issue, in accordance with its national procedures and upon application by an inspector or inspection assistant, multiple entry/exit and/or transit visas and other relevant documents to enable each inspector and inspection assistant to enter and to remain on the territory of that State Party for the sole purpose of carrying out inspection activities. Each State Party shall issue the necessary visa or travel documents for this purpose no later than 48 hours after receipt of the application or immediately upon arrival of the inspection team at the point of entry on the territory of the State Party. Such documents shall be valid for as long as is necessary to enable the inspector or inspection assistant to remain on the territory of the inspected State Party for the sole purpose of carrying out the inspection activities.

27. To exercise their functions effectively, members of the inspection team shall be accorded privileges and immunities as set forth in subparagraphs (a) to (i). Privileges and immunities shall be granted to members of the inspection team for the sake of this Treaty and not for the personal benefit of the individuals themselves. Such privileges and immunities shall be accorded to them for the entire period between arrival on and departure from the territory of the inspected State Party, and thereafter with respect to acts previously performed in the exercise of their official functions.

(a) The members of the inspection team shall be accorded the inviolability enjoyed by diplomatic agents pursuant to article 29 of the Vienna Convention on Diplomatic Relations of 18 April 1961;

(b) The living quarters and office premises occupied by the inspection team carrying out inspection activities pursuant to this Treaty shall be accorded the inviolability and protection accorded to the premises of diplomatic agents pursuant to article 30, paragraph 1, of the Vienna Convention on Diplomatic Relations;

(c) The papers and correspondence, including records, of the inspection team shall enjoy the inviolability accorded to all papers and correspondence of diplomatic agents pursuant to article 30, paragraph 2, of the Vienna Convention on Diplomatic Relations. The inspection team shall have the right to use codes for their communications with the Technical Secretariat;

(d) Samples and approved equipment carried by members of the inspection team shall be inviolable subject to provisions contained in this Treaty and exempt from all customs duties. Hazardous samples shall be transported in accordance with relevant regulations;

(e) The members of the inspection team shall be accorded the immunities accorded to diplomatic agents pursuant to article 31, paragraphs 1, 2 and 3, of the Vienna Convention on Diplomatic Relations;

(f) The members of the inspection team carrying out prescribed activities pursuant to this Treaty shall be accorded the exemption from dues and taxes accorded to diplomatic agents pursuant to article 34 of the Vienna Convention on Diplomatic Relations;

(g) The members of the inspection team shall be permitted to bring into the territory of the inspected State Party, without payment of any customs duties or related charges, articles for personal use, with the exception of articles the import or export of which is prohibited by law or controlled by quarantine regulations;

(h) The members of the inspection team shall be accorded the same currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions; and

(i) The members of the inspection team shall not engage in any professional or commercial activity for personal profit on the territory of the inspected State Party.

28. When transiting the territory of States Parties other than the inspected State Party, the members of the inspection team shall be accorded the privileges and immunities enjoyed by diplomatic agents pursuant to article 40, paragraph 1, of the Vienna Convention on Diplomatic Relations. Papers and correspondence, including records, and samples and approved equipment carried by them, shall be accorded the privileges and immunities set forth in paragraph 27 (c) and (d).

29. Without prejudice to their privileges and immunities the members of the inspection team shall be obliged to respect the laws and regulations of the inspected State Party and, to the extent that is consistent with the inspection mandate, shall be obliged not to interfere in the internal affairs of that State. If the inspected State Party considers that there has been an abuse of privileges and immunities specified in this Protocol, consultations shall be held between the State Party and the Director-General to determine whether such an abuse has occurred and, if so determined, to prevent a repetition of such an abuse.

30. The immunity from jurisdiction of members of the inspection team may be waived by the Director-General in those cases when the Director-General is of the opinion that immunity would impede the course of justice and that it can be waived without prejudice to the implementation of the provisions of this Treaty. Waiver must always be express.

31. Observers shall be accorded the same privileges and immunities accorded to members of the inspection team pursuant to this section, except for those accorded pursuant to paragraph 27 (d).

### *Points of Entry*

32. Each State Party shall designate its points of entry and shall supply the required information to the Technical Secretariat no later than 30 days after this Treaty

enters into force for it. These points of entry shall be such that the inspection team can reach any inspection area from at least one point of entry within 24 hours. Locations of points of entry shall be provided to all States Parties by the Technical Secretariat. Points of entry may also serve as points of exit.

33. Each State Party may change its points of entry by giving notice of such change to the Technical Secretariat. Changes shall become effective 30 days after the Technical Secretariat receives such notification, to allow notification to all States Parties.

34. If the Technical Secretariat considers that there are insufficient points of entry for the timely conduct of inspections or that changes to the points of entry proposed by a State Party would hamper such timely conduct of inspections, it shall enter into consultations with the State Party concerned to resolve the problem.

#### *Arrangements for use of non-scheduled aircraft*

35. Where timely travel to the point of entry is not feasible using scheduled commercial flights, an inspection team may utilize non-scheduled aircraft. No later than 30 days after this Treaty enters into force for it, each State Party shall inform the Technical Secretariat of the standing diplomatic clearance number for non-scheduled aircraft transporting an inspection team and equipment necessary for inspection. Aircraft routings shall be along established international airways that are agreed upon between the State Party and the Technical Secretariat as the basis for such diplomatic clearance.

#### *Approved inspection equipment*

36. The Conference, at its initial session, shall consider and approve a list of equipment for use during on-site inspections. Each State Party may submit proposals for the inclusion of equipment in the list. Specifications for the use of the equipment, as detailed in the Operational Manual for On-Site Inspections, shall take account of safety and confidentiality considerations where such equipment is likely to be used.

37. The equipment for use during on-site inspections shall consist of core equipment for the inspection activities and techniques specified in paragraph 69 and auxiliary equipment necessary for the effective and timely conduct of on-site inspections.

38. The Technical Secretariat shall ensure that all types of approved equipment are available for on-site inspections when required. When required for an on-site inspection, the Technical Secretariat shall duly certify that the equipment at the point of entry by the inspected State Party, the Technical Secretariat shall provide documentation and attach seals to authenticate the certification.

39. Any permanently held equipment shall be in the custody of the Technical Secretariat. The Technical Secretariat shall be responsible for the maintenance and calibration of such equipment.

40. As appropriate, the Technical Secretariat shall make arrangements with States Parties to provide equipment mentioned in the list. Such States Parties shall be responsible for the maintenance and calibration of such equipment.

### *C. On-site inspection request, inspection mandate and notification of inspection*

#### *On-site inspection request*

41. Pursuant to article IV, paragraph 37, the on-site inspection request shall contain at least the following information:

(a) The estimated geographical and vertical coordinates of the location of the event that triggered the request with an indication of the possible margin of error;

(b) The proposed boundaries of the area to be inspected specified on a map and in accordance with paragraphs 2 and 3;

- (c) The State Party or States Parties to be inspected or an indication that the area to be inspected or part thereof is beyond the jurisdiction or control of any State;
- (d) The probable environment of the event that triggered the request;
- (e) The estimated time of the event that triggered the request with an indication of the possible margin of error;
- (f) All data upon which the request is based;
- (g) The personal details of the proposed observer, if any; and
- (h) The results of a consultation and clarification process in accordance with article IV, or an explanation, if relevant, of the reasons why such a consultation and clarification process has not been carried out.

### *Inspection Mandate*

42. The mandate for an on-site inspection shall contain:
- (a) The decision of the Executive Council on the on-site inspection request;
  - (b) The name of the State Party or States Parties to be inspected or an indication that the inspection area or part thereof is beyond the jurisdiction or control of any State;
  - (c) The location and boundaries of the inspection area specified on a map, taking into account all information on which the request was based and all other available technical information, in consultation with the requesting State Party;
  - (d) The planned types of activity of the inspection team in the inspection area;
  - (e) The point of entry to be used by the inspection team;
  - (f) Any transit or basing points, as appropriate;
  - (g) The name of the head of the inspection team;
  - (h) The names of members of the inspection team;
  - (i) The name of the proposed observer, if any; and
  - (j) The list of equipment to be used in the inspection area.

If a decision by the Executive Council pursuant to Article IV, paragraphs 46 to 49, necessitates a modification of the inspection mandate, the Director-General may update the mandate with respect to sub-paragraphs (d), (h) and (j), as appropriate. The Director-General shall immediately notify the inspected State Party of any such modification.

### *Notification of inspection*

43. The notification made by the Director-General pursuant to article IV, paragraph 55, shall include the following information:

- (a) The inspection mandate;
- (b) The date and estimated time of arrival of the inspection team at the point of entry;
- (c) The means of arrival at the point of entry;
- (d) If appropriate, the standing diplomatic clearance number for non-scheduled aircraft; and
- (e) A list of any equipment which the Director-General requests the inspected State Party to make available to the inspection team for use in the inspection area.

44. The inspected State Party shall acknowledge receipt of the notification by the Director-General no later than 12 hours after having received the notification.

## **D. Pre-inspection activities**

### *Entry into the territory of the inspected state party, activities at the point of entry and transfer to the inspection area*

45. The inspected State Party that has been notified of the arrival of the inspection team shall ensure the immediate entry of the inspection team into its territory.

46. When a non-scheduled aircraft is used for travel to the point of entry, the Technical Secretariat shall provide the inspected State Party with a flight plan, through the National Authority, for the flight of the aircraft from the airfield prior to entering the airspace of that State Party to the point of entry, no less than six hours before the scheduled departure time from that airfield. Such a plan shall be filed in accordance with the procedures of the International Civil Aviation Organization applicable to civil aircraft. The Technical Secretariat shall include in the remarks section of the flight plan the standing diplomatic clearance number and the appropriate notation identifying the aircraft as an inspection aircraft. If a military aircraft is used, the Technical Secretariat shall request prior authorization from the inspected State Party to enter its airspace.

47. No less than three hours before the scheduled departure of the inspection team from the last airfield prior to entering the airspace of the inspected State Party, the inspected State Party shall ensure that the flight plan filed in accordance with paragraph 46 is approved, so that the inspection team may arrive at the point of entry by the estimated arrival time.

48. Where necessary, the head of the inspection team and the representative of the inspected State Party shall agree on a basing point and a flight plan from the point of entry to the basing point and, if necessary, to the inspection area.

49. The inspected State Party shall provide for or arrange parking, security protection, servicing and fuel as required by the Technical Secretariat for the aircraft of the inspection team at the point of entry and, where necessary, at the basing point and at the inspection area. Such aircraft shall not be liable for landing fees, departure tax, and similar charges. This paragraph shall also apply to aircraft used for overflight during the on-site inspection.

50. Subject to paragraph 51, there shall be no restriction by the inspected State Party on the inspection team bringing approved equipment that is in conformity with the inspection mandate into the territory of that State Party, or on its use in accordance with the provisions of the Treaty and this Protocol.

51. The inspected State Party shall have the right, without prejudice to the time-frame specified in paragraph 54, to check in the presence of inspection team members at the point of entry that the equipment has been approved and certified in accordance with paragraph 38. The inspected State Party may exclude equipment that is not in conformity with the inspection mandate or that has not been approved and certified in accordance with paragraph 38.

52. Immediately upon arrival at the point of entry and without prejudice to the time frame specified in paragraph 54, the head of the inspection team shall present to the representative of the inspected State Party the inspection mandate and an initial inspection plan prepared by the inspection team specifying the activities to be carried out by it. The inspection team shall be briefed by representatives of the inspected State Party with the aid of maps and other documentation as appropriate. The briefing shall include relevant natural terrain features, safety and confidentiality issues, and logistical arrangements for the inspection. The inspected State Party may indicate locations within the inspection area that, in its view, are not related to the purpose of the inspection.

53. After the pre-inspection briefing, the inspection team shall, as appropriate, modify the initial inspection plan, taking into account any comments by the inspected State Party. The modified inspection plan shall be made available to the representative of the inspected State Party.

54. The inspected State Party shall do everything in its power to provide assistance and to ensure the safe conduct of the inspection team, the approved equipment specified in paragraphs 50 and 51 and baggage from the point of entry to the inspection area no later than 36 hours after arrival at the point of entry, if no other timing has been agreed upon within the time frame specified in paragraph 57.



55. To confirm that the area to which the inspection team has been transported corresponds to the inspection area specified in the inspection mandate, the inspection team shall have the right to use approved location-finding equipment. The inspected State Party shall assist the inspection team in this task.

### *E. Conduct of inspections*

#### *General rules*

56. The inspection team shall discharge its functions in accordance with the provisions of the Treaty and this Protocol.

57. The inspection shall begin its inspection activities in the inspection area as soon as possible, but in no case later than 72 hours after arrival at the point of entry.

58. The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party and disturbance to the inspection area.

59. In cases where the inspected State Party has been requested, pursuant to paragraph 43 (e) or in the course of the inspection, to make available any equipment for use by the inspection team in the inspection area, the inspection State Party shall comply with the request to the extent it can.

60. During the on-site inspection the inspection team shall have, *inter alia*:

(a) The right to determine how the inspection will proceed, consistent with the inspection mandate and taking into account any steps taken by the inspected State Party consistent with the provisions on managed access;

(b) The right to modify the inspection plan, as necessary, to ensure the effective execution of the inspection;

(c) The obligation to take into account the recommendations and suggested modifications by the inspected State Party to the inspection plan;

(d) The right to request clarifications in connection with ambiguities that may arise during the inspection;

(e) The obligation to use only those techniques specified in paragraph 69 and to refrain from activities that are not relevant to the purpose of the inspection. The team shall collect and document such facts as are related to the purpose of the inspection, but shall neither seek nor document information that is clearly unrelated thereto. Any material collected and subsequently found not to be relevant shall be returned to the inspected State Party;

(f) The obligation to take into account and include in its report data and explanations on the nature of the event that triggered the request, provided by the inspected State Party from the national monitoring networks of the inspected State Party and from other sources;

(g) The obligation to provide the inspected State Party, at its request, with copies of the information and data collected in the inspection area; and

(h) The obligation to request the confidentiality and the safety and health regulations of the inspected State Party.

61. During the on-site inspection the inspected State Party shall have, *inter alia*:

(a) The right to make recommendations at any time to the inspection team regarding possible modification of the inspection plan;

(b) The right and the obligation to provide a representative to liaise with the inspection team;

(c) The right to have representatives accompany the inspection team during the performance of its duties and observe all inspection activities carried out by the inspection team. This shall not delay or otherwise hinder the inspection team in the exercise of its functions;

(d) The right to provide additional information and to request the collection and documentation of additional facts it believes are relevant to the inspection;

(e) The right to examine all photographic and measurement products as well as samples and to retain any photographs or parts thereof showing sensitive sites not related to the purpose of the inspection. The inspected State Party shall have the right to receive duplicate copies of all photographic and measurement products. The inspected State Party shall have the right to retain photographic originals and first-generation photographic products and to put photographs or parts thereof under joint seal within its territory. The inspected State Party shall have the right to provide its own camera operator to take still/video photographs as requested by the inspection team. Otherwise, these functions shall be performed by members of the inspection team;

(f) The right to provide the inspection team, from its national monitoring networks and from other sources, with data and explanations on the nature of the event that triggered the request; and

(g) The obligation to provide the inspection team with such clarification as may be necessary to resolve any ambiguities that arise during the inspection.

### *Communications*

62. The members of the inspection team shall have the right at all times during the on-site inspection to communicate with each other and with the Technical Secretariat. For this purpose they may use their own duly approved and certified equipment with the consent of the inspected State Party, to the extent that the inspected State Party does not provide them with access to other telecommunications.

### *Observer*

63. In accordance with article IV, paragraph 61, the requesting State Party shall liaise with the Technical Secretariat to coordinate the arrival of the observer at the same point of entry or basing point as the inspection team within a reasonable period of the arrival of the inspection team.

64. The observer shall have the right throughout the inspection to be in communication with the embassy of the requesting State Party located in the inspected State Party or, in the case of absence of an embassy, with the requesting State Party itself.

65. The observer shall have the right to arrive at the inspection area and to have access to and within the inspection area as granted by the inspected State Party.

66. The observer shall have the right to make recommendations to the inspection team throughout the inspection.

67. Throughout the inspection, the inspection team shall keep the observer informed about the conduct of the inspection and the findings.

68. Throughout the inspection, the inspected State Party shall provide or arrange for the amenities necessary for the observer similar to those enjoyed by the inspection team as described in paragraph 11. All costs in connection with the stay of the observer on the territory of the inspected State Party shall be borne by the requesting State Party.

### *Inspection Activities and Techniques*

69. The following inspection activities may be conducted and techniques, used, in accordance with the provisions on managed access, on collection, handling and analysis of samples, and on overflights:

(a) Position of finding from the air and at the surface to confirm the boundaries of the inspection area and establish coordinates of locations therein, in support of the inspection activities;

(b) Visual observation, video and still photography and multispectral imaging, including infrared measurements, at and below the surface, and from the air, to search for anomalies or artifacts;

(c) Measurement of levels of radioactivity above, at and below the surface, using gamma radiation monitoring and energy resolution analysis from the air, and at or under the surface, to search for and identify radiation anomalies;

(d) Environmental sampling and analysis of solids, liquids and gases from above, at and below the surface to detect anomalies;

(e) Passive seismological monitoring for aftershocks to localize the search area and facilitate determination of the nature of an event;

(f) Resonance seismometry and active seismic surveys to search for and locate underground anomalies, including cavities and rubble zones;

(g) Magnetic and gravitational field mapping, ground penetrating radar and electrical conductivity measurements at the surface and from the air, as appropriate, to detect anomalies or artifacts; and

(h) Drilling to obtain radioactive samples.

70. Up to 25 days after the approval of the on-site inspection in accordance with article IV, paragraph 46, the inspection team shall have the right to conduct any of the activities and use any of the techniques listed in paragraph 69 (a) to (e). Following the approval of the continuation of the inspection in accordance with article IV, paragraph 47, the inspection team shall have the right to conduct any of the activities and use any of the techniques listed in paragraph 69 (a) to (g). The inspection team shall only conduct drilling after the approval of the Executive Council in accordance with article IV, paragraph 48. If the inspection team requests an extension of the inspection duration in accordance with article IV, paragraph 49, it shall indicate in its request which of the activities and techniques listed in paragraph 69 it intends to carry out in order to be able to fulfil its mandate.

### *Overflights*

71. The inspection team shall have the right to conduct an overflight over the inspection area during the on-site inspection for the purposes of providing the inspection team with a general orientation of the inspection area, narrowing down and optimizing the locations for ground-based inspection and facilitating the collection of factual evidence using equipment specified in paragraph 79.

72. The overflight shall be conducted as soon as practically possible. The total duration of the overflight over the inspection area shall be no more than 12 hours.

73. Additional overflights using equipment specified in paragraphs 79 and 80 may be conducted subject to the agreement of the inspected State Party.

74. The area to be covered by overflights shall not extend beyond the inspection area.

75. The inspected State Party shall have the right to impose restrictions or, in exceptional cases and with reasonable justification, prohibitions on the overflight of sensitive sites not related to the purpose of the inspection. Restrictions may relate to the flight altitude, the number of passes and circling, the duration of hovering, the type of aircraft, the number of inspectors on board, and the type of measurements or observations. If the inspection team considers that the restrictions or prohibitions on the overflight of sensitive sites may impede the fulfillment of its mandate, the inspected State Party shall make every reasonable effort to provide alternative means of inspection.

76. Overflights shall be conducted according to a flight plan duly filed and approved in accordance with aviation rules and regulations of the inspected State Party. Flight safety regulations of the inspected State Party shall be strictly observed throughout all flying operations.

77. During overflights landing should normally be authorized only for purposes of staging or refueling.

78. Overflights shall be conducted at altitudes as requested by the inspection team consistent with the activities to be conducted, visibility conditions, as well as the aviation and the safety regulations of the inspected State Party and its right to protect sensitive information not related to the purposes of the inspection. Overflights shall be conducted up to a maximum altitude of 1,500 metres above the surface.

79. For the overflight conducted pursuant to paragraphs 71 and 72, the following equipment may be used on board the aircraft:

- (a) Field Glasses;
- (b) Passive location-finding equipment;
- (c) Video cameras; and
- (d) Hand-held still cameras.

80. For any additional overflights conducted pursuant to paragraph 73, inspectors on board the aircraft may also use portable, easily installed equipment for:

- (a) Multispectral (including infrared) imagery;
- (b) Gamma spectroscopy; and
- (c) Magnetic field mapping.

81. Overflights shall be conducted with a relatively slow fixed or rotary wing aircraft. The aircraft shall afford a broad, unobstructed view of the surface below.

82. The inspected State Party shall have the right to provide its own aircraft, pre-equipped as appropriate in accordance with the technical requirements of the relevant operational manual, and crew. Otherwise, the aircraft shall be provided or rented by the Technical Secretariat.

83. If the aircraft is provided or rented by the Technical Secretariat, the inspected State Party shall have the right to check the aircraft to ensure that it is equipped with approved inspection equipment. Such checking shall be completed within the time frame specified in paragraph 57.

84. Personnel on board the aircraft shall consist of:

- (a) The minimum number of flight crew consistent with the safe operation of the aircraft;
- (b) Up to four members of the inspection team;
- (c) Up to two representatives of the inspected State Party;
- (d) An observer, if any, subject to the agreement of the inspected State Party; and
- (e) An interpreter, if necessary.

85. Procedures for the implementation of overflights shall be detailed in the Operational Manual for On-Site Inspections.

### *Managed access*

86. The inspection team shall have the right to access the inspection area in accordance with the provisions of the Treaty and this Protocol.

87. The inspected State Party shall provide access within the inspection area in accordance with the time frame specified in paragraph 57.

88. Pursuant to article IV, paragraph 57, and paragraph 86 above, the rights and obligations of the inspected State Party shall include:

- (a) The right to take measures to protect sensitive installations and locations in accordance with this Protocol;
- (b) The obligation, when access is restricted within the inspection area, to make every reasonable effort to satisfy the requirements of the inspection mandate through alternative means. Resolving any questions regarding one or more aspects of the inspection shall not delay or interfere with the conduct of the inspection team of other aspects of the inspection; and

(c) The right to make the final decision regarding any access of the inspection team, taking into account its obligations under this Treaty and the provisions on managed access.

89. Pursuant to article IV, paragraph 57 (b), and paragraph 88 (a) above, the inspected State Party shall have the right throughout the inspection area to take measures to protect sensitive installations and locations and to prevent disclosure of confidential information not related to the purpose of the inspection. Such measures may include, inter alia:

(a) Shrouding of sensitive displays, stores, and equipment;

(b) Restricting measurements of radio nuclide activity and nuclear radiation to determining the presence or absence of those types and energies of radiation relevant to the purpose of the inspection;

(c) Restricting the taking or analyzing of samples to determining the presence or absence of radioactive or other products relevant to the purpose of the inspection;

(d) Managing access to buildings and other structures in accordance with paragraphs 90 and 91; and

(e) Declaring restricted-access sites in accordance with paragraphs 92 to 96.

90. Access to buildings and other structures shall be deferred until after the approval of the continuation of the on-site inspection in accordance with article IV, paragraph 47, except for access to buildings and other structures housing the entrance to a mine, other excavations, or caverns of large volume not otherwise accessible. For such buildings and structures, the inspection team shall have the right only of transit, as directed by the inspected State Party, in order to enter such mines, caverns or other excavations.

91. If, following the approval of the continuation of the inspection in accordance with article IV, paragraph 47, the inspection team demonstrates credibly to the inspected State Party that access to buildings and other structures is necessary to fulfil the inspection mandate and that the necessary activities authorized in the mandate could not be carried out from the outside, the inspection team shall have the right to gain access to such buildings or other structures. The head of the inspection team shall request access to a specific building or structure indicating the purpose of such access, the specific number of inspectors, as well as the intended activities. The modalities for access shall be subject to negotiation between the inspection team and the inspected State Party. The inspected State Party shall have the right to impose restrictions or, in exceptional cases and with reasonable justification, prohibitions, or the access to buildings and other structures.

92. When restricted-access sites are declared pursuant to paragraph 89 (e), each such site shall be no larger than 4 square kilometers. The inspected State Party has the right to declare up to 50 square kilometers of restricted-access sites. If more than one restricted-access site is declared, each such site shall be separated from any other such site by a minimum distance of 20 metres. Each restricted-access site shall have clearly defined and accessible boundaries.

93. The size, location, and boundaries of restricted-access sites shall be presented to the head of the inspection team no later than the time that the inspection team seeks to a location that contains all or part of such a site.

94. The inspection team shall have the right to place equipment and take other steps necessary to conduct its inspection up to the boundary of a restricted-access site.

95. The inspection team shall be permitted to observe visually all open places within the restricted-access site from the boundary of the site.

96. The inspection team shall make every reasonable effort to fulfil the inspection mandate outside the declared restricted-access sites prior to requesting access to such sites. If at any time the inspection team demonstrates credibly to the inspected State Party that the necessary activities authorized in the mandate could not be carried out from the outside and that access to a restricted-access site is necessary to fulfil the mandate, some members of the inspection team shall be granted access to accomplish specific tasks within the site. The inspected State Party shall have the right to shroud or otherwise protect

sensitive equipment, objects and materials not related to the purpose of the inspection. The number of inspectors shall be kept to the minimum necessary to complete the tasks related to the inspection. The modalities for such access shall be subject to negotiation between the inspection team and the inspected State Party.

### *Collection, Handling and Analysis of Samples*

97. Subject to paragraphs 86 to 96 and 98 to 100, the inspection team shall have the right to collect and remove relevant samples from the inspection area.

98. Whenever possible, the inspection team shall analyse samples on-site. Representatives of the inspected State Party shall have the right to be present when samples are analysed on-site. At the request of the inspection team, the inspected State Party shall, in accordance with agreed procedures, provide assistance for the analysis of samples on-site. The inspection team shall have the right to transfer samples for off-site analysis at laboratories designated by the Organization only if it demonstrates that the necessary sample analysis cannot be performed on-site.

99. The inspected State Party shall have the right to request that any unused samples or portions thereof be returned.

100. The inspected State Party shall have the right to request that any unused samples or portions thereof be returned.

101. The designated laboratories shall conduct chemical and physical analysis of the samples transferred for off-site analysis. Details of such analysis shall be elaborated in the Operational Manual for On-Site Inspections.

102. The Director-General shall have the primary responsibility for the security, integrity and preservation of samples and for ensuring that the confidentiality of samples transferred for off-site analysis is protected. The Director-General shall do so in accordance with procedures contained in the Operational Manual for On-Site Inspections. The Director-General shall, in any case:

- (a) Establish a stringent regime governing the collection, handling, transport and analysis of samples;
- (b) Certify the laboratories designated to perform different types of analysis;
- (c) Oversee the standardization of equipment and procedures at these designated laboratories and of mobile analytical equipment and procedures;
- (d) Monitor quality control and overall standards in relation to the certification of these laboratories and in relation to mobile equipment and procedures; and
- (e) Select from among the designated laboratories those which shall perform analytical or other functions in relation to specific investigations.

103. When off-site analysis is to be performed, samples shall be analysed in at least two designated laboratories. The Technical Secretariat shall ensure the expeditious processing of the analysis. The samples shall be accounted for by the Technical Secretariat and any unused samples or portions thereof shall be returned to the Technical Secretariat.

104. The Technical Secretariat shall compile the results of the laboratory analysis of samples relevant to the purpose of the inspection. Pursuant to article IV, paragraph 63, the Director-General shall transmit any such results promptly to the inspected State Party for comments and thereafter to the Executive Council and to all other States Parties and shall include detailed information concerning the equipment and methodology employed by the designated laboratories.

### *Conduct of inspections in areas beyond the jurisdiction or control of any State*

105. In case of an on-site inspection in an area beyond the jurisdiction or control of any State, the Director-General shall consult with the appropriate States Parties and agree on any transit or basing points to facilitate a speedy arrival of the inspection team in the inspection area.

106. The States Parties on whose territory transit or basing points are located shall, as far as possible, assist in facilitating the inspection, including transporting the inspection team, its baggage and equipment to the inspection area, as well as providing the relevant amenities specified in paragraph 11. The Organization shall reimburse assisting States Parties for all costs incurred.

107. *Subject to the approval of the Executive Council, the Director-General may negotiate standing arrangements with States Parties to facilitate assistance in the event of an on-site inspection in an area beyond the jurisdiction or control of any State.*

108. In cases where one or more States Parties have conducted an investigation of an ambiguous event in an area beyond the jurisdiction or control of any State before a request is made for an on-site inspection in that area, any results of such investigations may be taken into account by the Executive Council in its deliberations pursuant to article IV.

### *Post-inspection procedures*

109. Upon conclusion of the inspection, the inspection team shall meet with the representative of the inspected State Party to review the preliminary findings of the inspection team and to clarify any ambiguities. The inspection team shall provide the representative of the inspected State Party with its preliminary findings in written form according to a standardized format, together with a list of any samples and other material taken from the inspection area pursuant to paragraph 98. The document shall be signed by the head of the inspection team. In order to indicate that he or she has taken notice of the contents of the document, the representative of the inspected State Party shall countersign the document. The meeting shall be completed no later than 24 hours after the conclusion of the inspection.

### *Departure*

110. Upon completion of the post-inspection procedures, the inspection team and the observer shall leave, as soon as possible, the territory of the inspected State Party. The Inspected State Party shall do everything in its power to provide assistance and to ensure the safe conduct of the inspection team, equipment and baggage to the point of exit. Unless agreed otherwise by the inspected State Party and the inspection team, the point of exit used shall be the same as the point of entry.

## **PART III**

### **CONFIDENCE-BUILDING MEASURES**

1. Pursuant to article IV, paragraph 68, each State Party shall, on a voluntary basis, provide the Technical Secretariat with notification of any chemical explosion using 300 tonnes or greater of TNT-equivalent blasting material detonated as a single explosion anywhere on its territory, or at any place under its jurisdiction or control. If possible, such notification shall be provided in advance. Such notification shall include details on location, time, quantity and type of explosive used, as well as on the configuration and intended purpose of the blast.

2. Each State party shall, on a voluntary basis, as soon as possible after the entry into force of this Treaty provide to the Technical Secretariat, and at annual intervals thereafter update, information related to its national use of all other chemical explosions greater than 300 tonnes TNT-equivalent. In particular, the State Party shall seek to advise:

- (a) The geographic locations of sites where the explosions originate;
- (b) The nature of activities producing them and the general profile and frequency of such explosions;

(c) Any other relevant detail, if available; and to assist the Technical Secretariat in clarifying the origins of any such event detected by the International Monitoring System.

3. A State Party may, on a voluntary and mutually acceptable basis, invite representatives of the Technical Secretariat or of other States Parties to visit sites within its territory referred to in paragraphs 1 and 2.

4. For the purpose of calibrating the International Monitoring System, States Parties may liaise with the Technical Secretariat to carry out chemical calibration explosions or to provide relevant information on chemical explosions planned for other purposes.

## **B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations**

### **1. INTERNATIONAL MARITIME ORGANIZATION**

#### **(a) PROTOCOL OF 1996 TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS OF 1976. DONE AT LONDON ON 2 MAY 1996<sup>9</sup>**

##### **Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976**

*The Parties to the present Protocol,*

*Considering that it is desirable to amend the Convention on Limitation of Liability for establish a simplified procedure for updating the limitation amounts.*

*Have agreed as follows:*

##### *Article 1*

For the purposes of this Protocol:

1. "Convention" means the Convention on Limitation of Liability for Maritime Claims, 1976.
2. "Organization" means the International Maritime Organization.
3. "Secretary-General" means the Secretary-General of the Organization.

##### *Article 2*

Article 3, subparagraph (a), of the Convention is replaced by the following text:

(a) Claims for salvage, including, if applicable, any claim for special compensation under article 14 of the International Convention on Salvage 1989, as amended, or contribution in a general average.



### *Article 3*

Article 6, paragraph 1, of the Convention is replaced by the following texts:

1. The limits of liability for claims other than those mentioned in article 7, arising on any distinct occasion, shall be calculated as follows:

(a) In respect of claims for loss of life or personal injury,

(i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons;

(ii) For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

For each ton from 2,001 to 30,000 tons, 800 Units of Account;

For each ton from 30,001 to 70,000 tons 600 Units of Account; and

For each ton in excess of 70,000 tons, 400 Units of Account;

(b) In respect of any other claims,

(i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons;

(ii) For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

For each ton from 2,001 to 30,000 tons, 400 Units of Account;

For each ton from 30,001 to 70,000 tons, 300 Units of Account; and

For each ton in excess of 70,000 tons, 200 Units of Account.

### *Article 4*

Article 7, paragraph 1, of the Convention is replaced by the following text:

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.

### *Article 5*

Article 8, paragraph 2, of the Convention is replaced by the following text:

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval

or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

- (a) In respect of article 6, paragraph 1(a), at an amount of:
  - (i) 30 million monetary units for a ship with a tonnage not exceeding 2,000 tons;
  - (ii) For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
    - For each ton from 2,001 to 30,000 tons, 12,000 monetary units;
    - For each ton from 30,001 to 70,000 tons, 9,000 monetary units; and
    - For each ton in excess of 70,000 tons, 6,000 monetary units; and
- (b) In respect of article 6, paragraph 1(b), at an amount of:
  - (i) 15 million monetary units for a ship with a tonnage not exceeding 2,000 tons;
  - (ii) For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
    - For each ton from 2,001 to 30,000 tons, 6,000 monetary units;
    - For each ton from 30,001 to 70,000 tons, 4,500 monetary units; and
    - For each ton in excess of 70,000 tons, 3,000 monetary units; and
- (c) In respect of article 7, paragraph 1, at an amount of 2,625,000 monetary units multiplied by the number of passengers which the ship is authorized to carry authorized to its certificate.

Paragraphs 2 and 3 article 6 apply correspondingly to subparagraphs (a) and (b) of this paragraph.

### *Article 6*

The following text is added as paragraph 3bis in article 15 of the Convention:

3bis Notwithstanding the limit of liability prescribed in paragraph 1 of article 7, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in paragraph 1 of article 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.

### *Article 7*

Article 18, paragraph 1, of the Convention is replaced by the following text:

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:

- (a) To exclude the application of article 2, paragraphs 1(d) and (e);

(b) To exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.

## *Article 8*

### AMENDMENT OF LIMITS

1. Upon the request of at least on half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits specified in article 6, paragraph 1, article 7, paragraph 1, and article 8, paragraphs 2, of the Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of the circulation.

3. All Contracting States to the Convention as amended by this Protocol, whether or not members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States to the Convention as amended by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States to the Convention as amended by this Protocol shall be present at the time of voting.

5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting there from, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.

6. (a) No amendment of the limits this article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol multiplied by three.

7. Any amendment adopted in accorded with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one-fourth of the

States that were Contracting States at the time of the adoption of the amendment have communicated to and Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with paragraphs 1 and 2 of article 12 at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

### *Article 9*

1. The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. A State which is Party to this Protocol but not a Party to the Convention shall be bound by the provisions of the Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the Convention in relation to States Parties only to the Convention.

3. The Convention as amended by this Protocol shall apply only to claims out of occurrences which take place after the entry into force for each State of this Protocol.

4. Nothing in this Protocol shall affect the obligations of a State which is a Party both to the Convention and to this Protocol with respect to a State which is a Party to the Convention but not a Party to this Protocol.

## **FINAL CLAUSES**

### *Article 10*

#### **SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION**

1. This Protocol shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 by all States.

2. Any State may express its consent to be bound by this Protocol by:

(a) Signature without reservation as to ratification, acceptance or approval;  
or

(b) Signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

(c) Accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, so modified by such amendment.

### *Article 11*

#### ENTRY INTO FORCE

1. This Protocol shall enter into force ninety days following the date on which ten States have expressed their consent to be bound by it;

2. For any State which expresses its consent to be bound by this Protocol after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force ninety days following the date of expression of such consent.

### *Article 12*

#### DENUNCIATION

1. This Protocol may be denounced by any State Party at any time after time the date on which it enters into force for that State Party.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4. As between the States Parties to this Protocol, denunciation by any of them of the Convention in accordance with article 19 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

### *Article 13*

#### REVISION AND AMENDMENT

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Organization shall convene a conference of Contracting States to this Protocol for revising or amending it at the request of not less than one-third of the Contracting Parties.

### *Article 14*

#### DEPOSITARY

1. This Protocol and any amendments accepted under article 8 shall be deposited with the Secretary-General.

2. The Secretary-General shall:
- (a) Inform all States which have signed or acceded to this Protocol of:
    - (i) Each new signature or deposit of an instrument together with the date thereof;
    - (ii) Each declaration and communication under article 8, paragraph 2, of the Convention as amended by this Protocol, and article 8, paragraph 4, of the Convention;
    - (iii) The date of entry into force of this Protocol.
    - (iv) Any proposal to amend limits which has been made in accordance with article 8, paragraph 1;
    - (v) Any amendment which has been adopted in accordance with article 8, paragraph 4;
    - (vi) Any amendment deemed to have been accepted under article 8, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that article;
    - (vii) The deposit of any instrument of the denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
  - (b) Transmit certified true copies of this Protocol to all Signatory States and to all States which accede to this Protocol.
3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

### *Article 15*

#### LANGUAGES

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE at London this second day of May one thousand nine hundred and ninety-six.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

## CONFERENCE RESOLUTIONS

### RESOLUTION ON SETTING UP THE HNS FUND

*The Conference,*

*Having adopted* the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention),

*Considering* that before the HNS Convention enters into force and for some time thereafter, it will be necessary to prepare some administrative and organizational measures in order to ensure that, as from the date of entry into force of the Convention, the International Hazardous and Noxious Substances Fund (HNS Fund), to be set up under the Convention, can operate properly.

1. *Requests* the Assembly of the International Oil Pollution Compensation Fund, 1992 (IOPC Fund 1992), set up by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention) to give its Director the following assignments, on the basis that all expenses incurred will be repaid by the HNS Fund:

(a) To carry out, in addition to the tasks under the 1992 Fund Convention, the administrative tasks necessary for setting up the HNS Fund, in accordance with the provisions of the HNS Convention, on condition that this does not unduly prejudice the interests of the Parties to the 1992 Fund Convention:

(b) To give all necessary assistance for setting-up HNS Fund:

(c) To make the necessary preparations for the first session of the Assembly of the HNS Fund, which is to be convened by the Secretary-General of the International Maritime Organization, in accordance with article 44 of the HNS Convention:

(d) To hold negotiations with the International Maritime Organization to enable the HNS Fund to conclude agreements as soon as possible on the necessary premises and support services; and

2. *Recommends* that on behalf of the HNS Fund, the IOPC Fund 1992 should hold negotiations with the host Government to ensure that the question of the privileges, immunities and facilities accorded to the HNS Fund is considered and satisfactorily settled by mutual agreement, taking into account the privileges, immunities and facilities currently accorded to the IOPC Fund 1992.

(b) **PROTOCOL OF 1996 TO AMEND THE CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER, 1972 AND RESOLUTIONS ADOPTED BY THE SPECIAL MEETING. DONE AT LONDON ON 7 NOVEMBER 1996<sup>10</sup>**

*The Contracting Parties to this Protocol,*

*Stressing* the need to protect the marine environment and to promote the sustainable use and conservation of marine resources,

*Noting* in this regard the achievements within the framework of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and especially the evolution towards approaches based on precaution and prevention,

*Noting further* the contribution in this regard by complementary regional and national instruments which aim to protect the marine environment and which take account of specific circumstances and needs of those regions and States,

*Reaffirming* the value of a global approach to these matters and in particular the importance of continuing co-operation and collaboration between Contracting Parties in implementing the Convention and the Protocol,

*Recognizing* that it may be desirable to adopt, on a national or regional level, more stringent measures with respect to prevention and elimination of pollution of the marine environment from dumping at sea than are provided for in international conventions or other types of agreements with a global scope,

*Taking into account* relevant international agreements and actions, especially the United Nations Convention on the Law of the Sea, the Rio Declaration on Environment and Development and Agenda 21,

*Recognizing also* the interests and capacities of developing States and in particular small island developing States,

*Being convinced* that further international action to prevent, reduce and where practicable eliminate pollution of the sea caused by dumping can and must be taken without delay to protect and preserve the marine environment and to manage human activities in such a manner that the marine ecosystem will continue to sustain the legitimate uses of the sea and will continue to meet the needs of present and future generations,

*Have agreed* as follows:

## *Article 1*

### DEFINITIONS

For the purposes of this Protocol:

1. "Convention" means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended.
2. "Organization" means the International Maritime Organization.
3. "Secretary-General" means the Secretary-General of the Organization.
- 4.1 "Dumping" means:
  - .1 any deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
  - .2 any deliberate disposal into the sea of vessels, aircraft, platforms or other manmade structures at sea;
  - .3 any storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea; and
  - .4 any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal.
- .2 "Dumping" does not include:
  - .1 the disposal into the sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or other man-made structures;



- .2 placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Protocol; and
- .3 notwithstanding paragraph 4.1.4, abandonment in the sea of matter (e.g., cables, pipelines and marine research devices) placed for a purpose other than the mere disposal thereof.
- .3 The disposal or storage of wastes or other matter directly arising from or related to the exploration, exploitation and association off-shore processing of seabed mineral resources is not covered by the provisions of this Protocol.
- 5.1 "Incineration at sea" means the combustion on board a vessel, platform or other manmade structure at sea of wastes or other matter for the purpose of their deliberate disposal by thermal destruction.
- .2 "Incineration at sea" does not include the incineration of wastes or other matter on board a vessel, platform, or other man-made structure at sea if such wastes or other matter were generated during the normal operation of that vessel, platform or other man-made structure at sea.
- 6. "Vessels and aircraft" means waterborne or airborne craft of any type whatsoever. This expression includes air-cushioned craft and floating craft, whether self-propelled or not.
- 7. "Sea" means all marine waters other than the internal waters of States, as well as the seabed and the subsoil thereof; it does not include sub-seabed repositories accessed only from land.
- 8. "Wastes or other matter" means material and substance of any kind, form or description.
- 9. "Permit" means permission granted in advance and in accordance with relevant measures adopted pursuant to article 4.1.2 or 8.2.
- 10. "Pollution" means the introduction, directly or indirectly, by human activity, of wastes or other matter into the sea which results or is likely to result in such deleterious effects as harm to living resources and marine ecosystems, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.

## *Article 2*

### OBJECTIVES

Contracting Parties shall individually and collectively protect and preserve the marine environment from all sources of pollution and take effective measures, according to their scientific, technical and economic capabilities, to prevent, reduce and where practicable eliminate pollution caused by dumping or incineration at sea of wastes or other matter. Where appropriate, they shall harmonize their policies in this regard.

## *Article 3*

### GENERAL OBLIGATIONS

1. In implementing this Protocol, Contracting Parties shall apply a precautionary approach to environmental protection from dumping of wastes or other matter whereby appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects.

2. Taking into account the approach that the polluter should, in principle, bear the cost of pollution, each Contracting Party shall endeavour to promote practices whereby those it has authorized to engage in dumping or incineration at sea bear the cost of meeting the pollution prevention and control requirements for the authorized activities, having due regard to the public interest.

3. In implementing the provisions of this Protocol, Contracting Parties shall act so as not to transfer, directly or indirectly, damage or likelihood of damage from one part of the environment to another or transform one type of pollution into another.

4. No provision of this Protocol shall be interpreted as preventing Contracting Parties from taking, individually or jointly, more stringent measures in accordance with international law with respect to the prevention, reduction and where practicable elimination of pollution.

## *Article 4*

### DUMPING OF WASTES OR OTHER MATTER

- 1.1 Contracting Parties shall prohibit the dumping of any wastes or other matter with the exception of those listed in Annex 1.
- 1.2 The dumping of wastes or other matter listed in Annex 1 shall require a permit. Contracting Parties shall adopt administrative or legislative measures to ensure that issuance of permits and permit conditions comply with provisions of Annex 2. Particular attention shall be paid to opportunities to avoid dumping in favour of environmentally preferable alternatives.
2. No provision of this Protocol shall be interpreted as preventing a Contracting Party from prohibiting, insofar as that Contracting Party is concerned, the dumping of wastes or other matter mentioned in Annex 1. That Contracting Party shall notify the Organization of such measures.

## *Article 5*

### INCINERATION AT SEA

Contracting Parties shall prohibit incineration at sea of wastes or other matter.

## *Article 6*

### EXPORT OF WASTES OR OTHER MATTER

Contracting Parties shall not allow the export of wastes or other matter to other countries for dumping or incineration at sea.

## *Article 7*

### INTERNAL WATERS

1. Notwithstanding any other provision of this Protocol, this Protocol shall relate to internal waters only to the extent provided for in paragraphs 2 and 3.

2. Each Contracting Party shall at its discretion either apply the provisions of this Protocol or adopt other effective permitting and regulatory measures to control the deliberate disposal of wastes or other matter in marine internal waters where such disposal would be "dumping" or "incineration at sea" within the meaning of article 1, if conducted at sea.

3. Each Contracting Party should provide the Organization with information on legislation and institutional mechanisms regarding implementation, compliance and enforcement in marine internal waters. Contracting Parties should also use their best efforts to provide on a voluntary basis summary reports on the type of nature of the materials dumped in marine internal waters.

## *Article 8*

### EXCEPTIONS

1. The provisions of article 4.1 and 5 shall not apply when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping will be less than would otherwise occur. Such dumping shall be conducted so as to minimize the likelihood of damage to human or marine life and shall be reported forthwith to the Organization.

2. A Contracting Party may issue as an exception to article 4.1 and 5, in emergencies posing an unacceptable threat to human health, safety, or the marine environment and admitting of no other feasible solution. Before doing so the Contracting Party shall consult any other country or countries that are likely to be affected and the Organization which, after consulting other Contracting Parties, and competent international organizations as appropriate, shall, in accordance with article 18.6 promptly recommend to the Contracting Party the most appropriate procedures to adopt. The Contracting Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment and shall inform the Organization of the action it takes. The Contracting Parties pledge themselves to assist one another in such situations.

3. Any Contracting Party may waive its rights under paragraph 2 at the time of, or subsequent to ratification of, or accession to this Protocol.

## *Article 9*

### ISSUANCE OF PERMITS AND REPORTING

1. Each Contracting Party shall designate an appropriate authority or authorities to:

- .1 issue permits in accordance with this Protocol;
- .2 keep records of the nature of quantities of all wastes or other matter for which dumping permits have been issued and where practicable the quantities actually dumped and the location, time and method of dumping; and
- .3 monitor individually, or in collaboration with other Contracting Parties and competent international organizations, the condition of the sea for the purposes of this Protocol.

2. The appropriate authority or authorities of a Contracting Party shall issue permits in accordance with this Protocol in respect of wastes or other matter intended for dumping or, as provided for in article 8.2, incineration at sea:

- .1 loaded in its territory; and
- .2 loaded onto a vessel or aircraft registered in its territory or flying its flag, when the loading occurs in the territory of a State not a Contracting Party to this Protocol.

3. In issuing permits, the appropriate authority or authorities shall comply with the requirements of article 4, together with such additional criteria, measures and requirements as they may consider relevant.

4. Each Contracting Party, directly or through a secretariat established under a regional agreement, shall report to the Organization and where appropriate to other Contracting Parties:

- .1 the information specified in paragraphs 1.2 and 1.3;
- .2 the administrative and legislative measures taken to implement the provisions of this Protocol, including a summary of enforcement measures; and
- .3 the effectiveness of the measures referred to in paragraph 4.2 and any problems encountered in their application.

The information referred to in paragraph 1.2 and 1.3 shall be submitted on an annual basis. The information referred to in paragraph 4.2 and 4.3 shall be submitted on a regular basis.

5. Reports submitted under paragraphs 4.2 and 4.3 shall be evaluated by an appropriate subsidiary body as determined by the Meeting of Contracting Parties. This body will report its conclusions to an appropriate Meeting or Special Meeting of Contracting Parties.

## *Article 10*

### APPLICATION AND ENFORCEMENT

1. Each Contracting Party shall apply the measures required to implement this Protocol to all:

- .1 vessels and aircraft registered in its territory or flying its flag;
  - .2 vessels and aircraft loading in its territory the wastes or other matter which are to be dumped or incinerated at sea; and
  - .3 vessels, aircraft and platforms or other man-made structures believe to be engaged in dumping or incineration at sea in areas within which it is entitled to exercise jurisdiction in accordance with international law.
2. Each Contracting Party shall take appropriate measures in accordance with international law to prevent and if necessary punish acts contrary to the provisions of this Protocol.
3. Contracting Parties agree to co-operate in the development of procedures for the effective application of this Protocol in areas beyond the jurisdiction of any State, including procedures for the reporting of vessels and aircraft observed dumping or incinerating at sea in contravention of this Protocol.
4. This Protocol shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However, each Contracting Party shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Protocol and shall inform the Organization accordingly.
5. A State may, at the time it expresses to consent to be bound by this Protocol, or at any time thereafter, declare that it shall apply the provisions of this Protocol to its vessels and aircraft referred to in paragraph 4, recognizing that only that State may enforce those provisions against such vessels and aircraft.

## *Article 11*

### COMPLIANCE PROCEDURES

1. No later than two years after the entry into force of this Protocol, the Meeting of Contracting Parties shall establish those procedures and mechanisms necessary to assess and promote compliance with this Protocol. Such procedures and mechanisms shall be developed with a view to allowing for the full and open exchange of information, in a constructive manner.

After full consideration of any information submitted pursuant to this Protocol and any recommendations made through procedures or mechanisms established under paragraph 1, the Meeting of Contracting Parties may offer advice, assistance or co-operation to Contracting Parties and non-Contracting Parties.

## *Article 12*

### REGIONAL COOPERATION

In order to further objectives of this Protocol, Contracting Parties with common interests to protect the marine environment in a given geographical area shall endeavour, taking into account characteristic regional features, to enhance

regional agreements consistent with this Protocol for the prevention, reduction and where practicable elimination of pollution caused by dumping or incineration at sea of wastes or other matter. Contracting Parties shall seek to co-operate with the parties to regional agreements in order to develop harmonized procedures to be followed by Contracting Parties to the different conventions concerned.

### *Article 13*

#### TECHNICAL COOPERATION AND ASSISTANCE

1. Contracting Parties shall, through collaboration within the Organization and in co-ordination with other competent international organizations, promote bilateral and multilateral support for the prevention, reduction and where practicable elimination of pollution caused by dumping as provided for in this Protocol to those Contracting Parties that request it for:

- .1 training of scientific and technical personnel for research, monitoring and enforcement including as appropriate the supply of necessary equipment and facilities, with a view to strengthening national capabilities;
  - .2 advice on implementation of this Protocol;
  - .3 information and technical co-operation relating to waste minimization and clean production processes;
  - .4 information and technical co-operation relating to the disposal and treatment of waste other measures to prevent, reduce and where practicable eliminate pollution caused by dumping; and
  - .5 access to and transfer of environmentally sound technologies and corresponding know-how, in particular to developing countries and countries in transition to market economies, on favourable terms, including on concessional and preferential terms, as mutually agreed, taking into account the need to protect intellectual property rights as well as the special needs of developing countries and countries in transition to market economies.
2. The Organization shall perform the following functions:
- .1 forward requests from Contracting Parties for technical co-operation to other Contracting Parties, taking into account such factors as technical capabilities;
  - .2 co-ordinate requests for assistance with other competent international organizations, as appropriate; and
  - .3 subject to the availability of adequate resources, assist developing countries and those in transition to market economies, which have declared their intention to become Contracting Parties to this Protocol, to examine the means necessary to achieve full implementation.

## *Article 14*

### SCIENTIFIC AND TECHNICAL RESEARCH

1. Contracting Parties shall take appropriate measures to promote and facilitate scientific and technical research on the prevention, reduction and where practicable elimination of pollution by dumping and other sources of marine pollution relevant to this Protocol. In particular, such research should include observation, measurement, evaluation and analysis of pollution by scientific methods.

2. Contracting Parties shall, to achieve the objectives of this Protocol, promote the availability of relevant information to other Contracting Parties who request it on:

- .1 scientific and technical activities and measures undertaken in accordance with this Protocol;
- .2 marine scientific and technological programmes and their objectives; and
- .3 the impacts observed from the monitoring and assessment conducted pursuant to article 9.1.3.

## *Article 15*

### RESPONSIBILITY AND LIABILITY

In accordance with the principles of international law regarding State responsibility for damage to the environment of other States or to any other area of the environment, the Contracting Parties undertake to develop procedures regarding liability arising from the dumping or incineration at sea of wastes or other matter.

## *Article 16*

### SETTLEMENT OF DISPUTES

1. Any disputes regarding the interpretation or application of this Protocol shall be resolved in the first instance through negotiation, mediation or conciliation, or other peaceful means chosen by parties to the dispute.

2. If no resolution is possible within twelve months after one Contracting Parties has notified another that a dispute exists between them, the dispute shall be settled, at the request of a party to the dispute, by means of the Arbitral Procedure set forth in Annex 3, unless the parties to the dispute agree to use one of the procedures listed in paragraph 1 of Article 287 of the 1982 United Nations Convention on the Law of the Sea. The parties to the dispute may so agree, whether or not they are also States Parties to the 1982 United Nations Convention on the Law of the Sea.

3. In the event an agreement to use one of the procedures listed in paragraph 1 of Article 287 of the 1982 United Nations Convention on the Law of the Sea is reached, the provisions set forth in Part XV of that Convention that are related to the chosen procedure would also apply, *mutatis mutandis*.

4. The twelve month period referred to in paragraph 2 may be extended for another twelve months by mutual consent of the parties concerned.

5. Notwithstanding paragraph 2, any State may, at the time it expresses its consent to be bound by this Protocol, notify the Secretary-General that, when it is a party to a dispute about the interpretation or application of article 3.1. or 3.2, its consent will be required before the dispute may be settled by means of the Arbitral Procedure set forth in Annex 3.

### *Article 17*

#### INTERNATIONAL COOPERATION

Contracting Parties shall promote the objectives of this Protocol within the competent international organizations.

### *Article 18*

#### MEETINGS OF CONTRACTING PARTIES

1. Meetings of Contracting Parties or Special Meetings of Contracting Parties shall keep under continuing review the implementation of this Protocol and evaluate its effectiveness with a view to identifying means of strengthening action, where necessary, to prevent, reduce and where practicable eliminate pollution caused by dumping and incineration at sea of wastes or other matter. To these ends, Meetings of Contracting Parties or Special Meetings of Contracting Parties may:

- .1 review and adopt amendments to this Protocol in accordance with articles 21 and 22;
- .2 establish subsidiary bodies, as required, to consider any matter with a view to facilitating the effective implementation of this Protocol;
- .3 invite appropriate expert bodies to advise the Contracting Parties or the Organization on matters relevant to this Protocol;
- .4 promote co-operation with competent international organizations concerned with the prevention and control of pollution;
- .5 consider the information made available pursuant to article 9.4;
- .6 develop or adopt, in consultation with competent international organizations, procedures referred to in article 8.2, including basic criteria for determining exceptional and emergency situations, and procedures for consultative advice and the safe disposal of matter at sea in such circumstances;
- .7 consider and adopt resolutions; and
- .8 consider any additional action that may be required.

2. The Contracting Parties at their first Meeting shall establish rules of procedure as necessary.



## *Article 19*

### DUTIES OF THE ORGANIZATION

1. The Organization shall be responsible for Secretariat duties in relation to this Protocol. Any Contracting Party to this Protocol not being a member of this Organization shall make an appropriate contribution to the expenses incurred by the Organization in performing these duties.

2. Secretariat duties necessary for the administration of this Protocol include:

- .1 convening Meetings of Contracting Parties once per year, unless otherwise decided by Contracting Parties, and Special Meetings of Contracting Parties at any time on the request of two-thirds of the Contracting Parties;
- .2 providing advice on request on the implementation of this Protocol and on guidance and procedures developed thereunder;
- .3 considering enquiries by, and information from Contracting Parties, consulting with them and with the competent international organizations, and providing recommendations to Contracting Parties on questions related to, but not specifically covered by, this Protocol;
- .4 preparing and assisting, in consultation with Contracting Parties and the competent international organizations, in the development and implementation of procedures referred to in article 18.6;
- .5 conveying to the Contracting Parties concerned all notifications received by the Organization in accordance with this Protocol; and
- .6 preparing, every two years, a budget and a financial account for the administration of this Protocol which shall be distributed to all Contracting Parties.

3. The Organization shall, subject to the availability of adequate resources, in addition to the requirements set out in article 13.2.3.

- .1 collaborate in assessments of the state of the marine environment; and
- .2 co-operate with competent international organizations concerned with the prevention and control of pollution.

## *Article 20*

### ANNEXES

Annexes to this Protocol form an integral part of this Protocol.

## *Article 21*

### AMENDMENT OF THE PROTOCOL

1. Any Contracting Party may propose amendments to the articles of this Protocol. The text of a proposed amendment shall be communicated to Contracting Parties by the Organization at least six months to its consideration at a Meeting of Contracting Parties or a Special Meeting of Contracting Parties.

2. Amendments to the articles of this Protocol shall be adopted by a two-thirds majority vote of the Contracting Parties which are present and voting at the Meeting of Contracting Parties or Special Meeting of Contracting Parties designated for this purpose.

3. An amendment shall enter into force for the Contracting Parties which have accepted it on the sixtieth day after two-thirds of the Contracting Parties shall have deposited an instrument of acceptance of the amendment with the Organization. Thereafter the amendment shall enter into force for any Contracting Party on the sixtieth day after the date on which that Contracting Party has deposited its instrument of acceptance of the amendment.

4. The Secretary-General shall inform Contracting Parties of any amendments adopted at Meetings of Contracting Parties and of the date on which such amendments enter into force generally and for each Contracting Party.

5. After entry into force of an amendment to this Protocol, any State that becomes a Contracting Party to this Protocol shall become a Contracting Party to this Protocol as amended, unless two-thirds of the Contracting Parties present and voting at the Meeting or Special Meeting of Contracting Parties adopting the amendment agree otherwise.

## *Article 22*

### AMENDMENT OF THE ANNEXES

1. Any Contracting Party may propose amendments to the Annexes to this Protocol. The text of a proposed amendment shall be communicated to Contracting Parties by the Organization at least six months prior to its consideration by a Meeting of Contracting Parties or Special Meeting of Contracting Parties.

2. Amendments to the Annexes other than Annex 3 will be based on scientific or technical considerations and may take into account legal, social and economic factors as appropriate. Such amendments shall be adopted by a two-thirds majority vote of the Contracting Parties present and voting at a Meeting of Contracting Parties or Special Meeting of Contracting Parties designated for this purpose.

3. The Organization shall without delay communicate to Contracting Parties amendments to the Annexes that have been adopted at a Meeting of Contracting Parties or Special Meeting of Contracting Parties.

4. Except as provided in paragraph 7, amendments to the Annexes shall enter into force for each Contracting Party immediately on notification of its acceptance to the Organization or 100 days after the date of their adoption at a Meeting of Contracting Parties, if that is later, except for those Contracting Parties which before the end of the 100 days make a declaration that they are not able to accept the amendment at that time. A Contracting Party may at any time substitute an acceptance for a previous declaration of objection and the amendment previously objected to shall thereupon enter into force for that Contracting Party.

5. The Secretary-General shall without delay notify Contracting Parties of instruments of acceptance or objection deposited with the Organization.

6. A new Annex or an amendment to an Annex which is related to an amendment to the articles of this Protocol shall not enter into force until such time as the amendment to the articles of this Protocol enters into force.

7. With regard to amendments to Annex 3 concerning the Arbitral Procedure and with regard to the adoption and entry into force of new Annexes the procedures on amendments to the articles of this Protocol shall apply.

### *Article 23*

#### RELATIONSHIP BETWEEN THE PROTOCOL AND THE CONVENTION

This Protocol will supersede the Convention as between Contracting Parties to this Protocol which are also Parties to the Convention.

### *Article 24*

#### SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Protocol shall be open for signature by any State at the Headquarters of the Organization from 1 April 1997 to 31 March 1998 and shall thereafter remain open for accession by any State.

2. States may become Contracting Parties to this Protocol by:

- .1 signature not subject to ratification, acceptance or approval; or
- .2 signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- .3 accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

### *Article 25*

#### ENTRY INTO FORCE

1. This Protocol shall enter into force on the thirtieth day following the date on which:

- .1 at least 26 States have expressed their consent to be bound by this Protocol in accordance with article 24; and

.2 at least 15 Contracting Parties to the Convention are included in the number of States referred to in paragraph 1.1.

2. For each State that has expressed its consent to be bound by this Protocol in accordance with article 24 following the date referred to in paragraph 1, this Protocol shall enter into force on the thirtieth day after the date on which such State expressed its consent.

## *Article 26*

### TRANSITIONAL PERIOD

1. Any State that was not a Contracting Party to the Convention before 31 December 1996 and that expresses its consent to be bound by this Protocol prior to its entry into force or within five years after its entry into force may, at the time it expresses its consent, notify the Secretary-General that, for reasons described in the notification, it will not be able to comply with specific provisions of this Protocol other than those provided in paragraph 2, for a transitional period that shall not exceed that described in paragraph 4.

2. No notification made under paragraph 1 shall affect the obligations of a Contracting Party to this Protocol with respect to incineration at sea or the dumping of radioactive wastes or other radioactive matter.

3. Any Contracting Party to this Protocol that has notified the Secretary-General under paragraph 1 that, for the specified transitional period, it will not be able to comply, in part or in whole, with article 4.1 or article 9 shall nonetheless during that period prohibit the dumping of wastes or other matter for which it has not issued a permit, use its best efforts to adopt administrative or legislative measures to ensure that issuance of permits and permit conditions comply with the provisions of Annex 2, and notify the Secretary-General of any permits issued.

4. Any transitional period specified in a notification made under paragraph 1 shall not extend beyond five years after such notification is submitted.

5. Contracting Parties that have made a notification under paragraph 1 shall submit to the first Meeting of Contracting Parties occurring after deposit of their instrument of ratification, acceptance, approval or accession a programme and timetable to achieve full compliance with this Protocol, together with any requests for relevant technical co-operation and assistance in accordance with article 13 of this Protocol.

6. Contracting Parties that have made a notification under paragraph 1 shall establish procedures and mechanisms for the transitional period to implement and monitor submitted programmes designed to achieve full compliance with this Protocol. A report on progress toward compliance shall be submitted by such Contracting Parties to each Meeting of Contracting Parties held during their transitional period for appropriate action.

## *Article 27*

### WITHDRAWAL

1. Any Contracting Party may withdraw from this Protocol at any time after the expiry of two years from the date on which this Protocol enters into force for that Contracting Party.
2. Withdrawal shall be effected by the deposit of an instrument of withdrawal with the Secretary-General.
3. A withdrawal shall take effect one year after receipt by the Secretary-General of the instrument of withdrawal or such longer period as may be specified in that instrument.

## *Article 28*

### DEPOSITARY

1. This Protocol shall be deposited with the Secretary-General.
2. In addition to the functions specified in articles 10.5, 16.5, 21.4, 22.5 and 26.5, the Secretary-General shall:
  - .1 inform all States which have signed this Protocol or acceded thereto of:
    - .1 each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
    - .2 the date of entry into force of this Protocol; and
    - .3 the deposit of any instrument of withdrawal from this Protocol together with the date on which it was received and the date on which the withdrawal takes effect.
  - .2 transmit certified copies of this Protocol to all States which have signed this Protocol or acceded thereto.
  - .3 As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

## *Article 29*

### AUTHENTIC TEXTS

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Protocol.

DONE at London, this seventh day of November, one thousand nine hundred and ninety-six.

## **ANNEX 1**

### **Wastes or other matter that may be considered for dumping**

1. The following wastes or other matter are those that may be considered for dumping being mindful of the Objectives and General Obligations of this Protocol set out in articles 2 and 3:

- .1 dredged material;
- .2 sewage sludge;
- .3 fish waste, or material resulting from industrial fish processing operations;
- .4 vessels and platforms or other man-made structures at sea;
- .5 inert, inorganic geological material;
- .6 organic material of natural origin; and
- .7 bulky items primarily comprising iron, steel, concrete and similarly unarmful materials for which the concern in physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping.

2. The wastes or other matter listed in paragraphs 1.4 and 1.7 may be considered for dumping, provided that material capable of creating floating debris or otherwise contributing to pollution of the marine environment has been removed to the maximum extent and provided that the material dumped poses no serious obstacle to fishing or navigation.

3. Notwithstanding the above, materials listed in paragraphs 1.1 to 1.7 containing levels of radioactivity greater than de minimis (exempt) concentrations as defined by the IAEA ad adopted by Contracting Parties, shall not be considered eligible for dumping; provided further that within 25 years of 20 February 1994, and at each 25 year interval thereafter, Contracting Parties shall complete a scientific study relating to all radioactive wastes and other radioactive matter other than high level wastes or matter, taking into account such other factors as Contracting Parties consider appropriate and shall review the prohibition on dumping of such substances in accordance with the procedure set forth in article 22.

## **ANNEX 2**

### **Assessment of wastes or other matter that may be considered for dumping**

#### **GENERAL**

1. The acceptance of dumping under certain circumstances shall not remove the obligations under this Annex to make further attempts to reduce the necessity for dumping.

#### **WASTE PREVENTION AUDIT**

2. The initial stages in assessing alternatives to dumping should, as appropriate, include an evaluation of:

- .1 types, amounts and relative hazard of wastes generated;
- .2 details of the production process and the sources of wastes within that process; and
- .3 feasibility of the following waste reduction/prevention techniques:
  - .1 product reformulation;
  - .2 clean production technologies;

- .3 process modification;
- .4 input substitution; and
- .5 on-site, closed-loop recycling.

3. In general terms, if the required audit reveals that opportunities exist for waste prevention at source, an applicant is expected to formulate and implement a waste prevention strategy, in collaboration with relevant local and national agencies, which includes specific waste reduction targets and provision for further waste prevention audits to ensure that these targets are being met. Permit issuance or renewal decisions shall assure compliance with any resulting waste reduction and prevention requirements.

4. For dredged material and sewage sludge, the goal of waste management should be to identify and control the sources of contamination. This should be achieved through implementation of waste prevention strategies and requires collaboration between the relevant local and national agencies involved with the control of point and non-point sources of pollution. Until this objective is met, the problems of contaminated dredged material may be addressed by using disposal management techniques at sea or on land.

#### CONSIDERATION OF WASTE MANAGEMENT OPTIONS

5. Applications to dump wastes or other matter shall demonstrate that appropriate consideration has been given to the following hierarchy of waste management options, which implies an order of increasing environmental impact:

- .1 re-use;
- .2 off-site recycling;
- .3 destruction of hazardous constituents;
- .4 treatment to reduce or remove the hazardous constituents; and
- .5 disposal on land, into air and in water.

6. A permit to dump wastes or other matter shall be refused if the permitting authority determines that appropriate opportunities exist to re-use, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs. The practical availability of other means of disposal should be considered in the light of a comparative risk assessment involving both dumping and the alternatives.

#### CHEMICAL, PHYSICAL AND BIOLOGICAL PROPERTIES

7. A detailed description and characterization of the waste is an essential precondition for the consideration of alternatives and the basis for a decision as to whether a waste may be dumped. If a waste is so poorly characterized that proper assessment cannot be made of its potential impacts on human health and environment, that waste shall not be dumped.

- 8. Characterization of the wastes and their constituents shall take into account:
  - .1 origin, total amount, form and average composition;
  - .2 properties: physical, chemical, biochemical and biological;
  - .3 toxicity;
  - .4 persistence: physical, chemical and biological; and
  - .5 accumulation and biotransformation in biological materials or sediments.

#### ACTION LIST

9. Each Contracting Party shall develop a national Action List to provide a mechanism for screening candidate wastes and their constituents on the basis of their potential effects on human health and the marine environment. In selecting substances for consideration in an Action List, priority shall be given to toxic, persistent and bioaccumulative substances from anthropogenic sources (e.g., cadmium, mercury, organohalogens, petroleum hydrocarbons, and, whenever relevant, arsenic lead, copper, zinc, beryllium, chro-

mium, nickel and vanadium, organosilicon compounds, cyanides, fluorides and pesticides or their by-products other than organohalogens). An Action List can also be used as a trigger mechanism for further waste prevention considerations.

10. An Action List shall specify an upper level and may also specify a lower level. The upper level should be set as to avoid acute or chronic effects on human health or on sensitive marine organisms representative of the marine ecosystem. Application of an Action List will result in three possible categories of waste:

- .1 wastes which contain specified substances, or which cause biological responses, exceeding the relevant upper level shall not be dumped, unless made acceptable for dumping through the use of management techniques or processes;
- .2 wastes which contain specified substances, or which cause biological responses, below the relevant lower levels should be considered to be of little environmental concern in relation to dumping; and
- .3 wastes which contain specified substances, or which cause biological responses, below the upper level but above the lower level require more detailed assessment before their suitability for dumping can be determined.

#### DUMP-SITE SELECTION

11. Information required to select a dump-site shall include:

- .1 physical, chemical and biological characteristics of the water-column and the seabed;
- .2 location of amenities, values and other uses of the sea in the area under consideration;
- .3 assessment of the constituent fluxes associated with dumping in relation to existing fluxes of substances in the marine environment; and
- .4 economic and operational feasibility.

#### ASSESSMENT OF POTENTIAL EFFECTS

12. Assessment of potential effects should lead to a concise statement of the expected consequences of the sea or land disposal options, i.e., the "Impact Hypothesis". It provides a basis for deciding whether to approve or reject the proposed disposal option and for defining environmental monitoring requirements.

13. The assessment for dumping should integrate information on waste characteristics, conditions at the proposed dump-site(s), fluxes, and proposed disposal techniques and specify the potential effects on human health, living resources, amenities and other legitimate uses of the sea. It should define the nature, temporal and spatial scales and duration of expected impacts based on reasonably conservative assumptions.

14. An analysis of each disposal option should be considered in the light of a comparative assessment of the following concerns: human health risks, environmental costs, hazards, (including accidents), economics and exclusion of future uses. If this assessment reveals that adequate information is not available to determine the likely effects of the proposed disposal option then this option should not be considered further. In addition, if the interpretation of the comparative assessment shows the dumping option to be less preferable, a permit for dumping should not be given.

15. Each assessment should conclude with a statement supporting a decision to issue or refuse a permit for dumping.

#### MONITORING

16. Monitoring is used to verify that permit conditions are met — compliance monitoring — and that the assumptions made during the permit review and site selection process were correct and sufficient to protect the environment and human health — field monitoring. It is essential that such monitoring programmes have clearly defined objectives.



## PERMIT AND PERMIT CONDITIONS

17. A decision to issue a permit should only be made if all impact evaluations are completed and the monitoring requirements are determined. The provisions of the permit shall ensure, as far as practicable, that environmental disturbance and detriment are minimized and the benefits maximized. Any permit issued shall contain data and information specifying:

- .1 the types and sources of materials to be dumped;
- .2 the location of the dump-site(s);
- .3 the method of dumping; and
- .4 monitoring and reporting requirements.

18. Permits should be reviewed at regular intervals, taking into account the results of monitoring and the objectives of monitoring programmes. Review of monitoring results will indicate whether field programmes need to be continued, revised or terminated and will contribute to informed decisions regarding the continuance, modification or revocation of permits. This provides an important feedback mechanism for the protection of human health and the marine environment.

## ANNEX 3

### Arbitral procedure

#### *Article 1*

1. An Arbitral Tribunal (hereinafter referred to as the "Tribunal") shall be established upon the request of a Contracting Party addressed to another Contracting Party in application of article 16 of this Protocol. The request for arbitration shall consist of a statement of the case together with any supporting documents.

2. The requesting Contracting Party shall inform the Secretary-General of:

- .1 its request for arbitration; and
- .2 the provisions of this Protocol the interpretation or application of which is, in its opinion, the subject of disagreement.

3 The Secretary-General shall transmit this information to all Contracting States.

#### *Article 2*

1. The Tribunal shall consist of a single arbitrator if so agreed between the parties to the dispute within 30 days from the date of receipt of the request for arbitration.

2. In the case of the death, disability or default of the arbitrator, the parties to a dispute may agree upon a replacement within 30 days of such death, disability or default.

#### *Article 3*

1. Where the parties to a dispute do not agree upon a Tribunal in accordance with article 2 of this Annex, the Tribunal shall consist of three members:

- .1 one arbitrator nominated by each party to the dispute; and
- .2 a third arbitrator who shall be nominated by agreement between the two first named and who shall act as its Chairman.

2. If the Chairman of a Tribunal is not nominated within 30 days of nomination of the second arbitrator, the parties to a dispute shall, upon the request of one party, submit to the Secretary-General within a further period of 30 days an agreed list of qualified persons. The Secretary-General shall select the Chairman from such list as soon as possible. He shall not select a Chairman who is or has been a national of one party to the dispute except with the consent of the other party to the dispute.

3. If one party to a dispute fails to nominate an arbitrator as provided in paragraph 1.1 within 60 days from the date of receipt of the request for arbitration, the other party may request the submission to the Secretary-General within a period of 30 days of an agreed list of qualified persons. The Secretary-General shall select the Chairman of the Tribunal from such list as soon as possible. The Chairman shall then request the party which has not nominated an arbitrator to do so. If this party does not nominate an arbitrator within 15 days of such request, the Secretary-General shall, upon request of the Chairman, nominate the arbitrator from the agreed list of qualified persons.

4. In the case of the death, disability or default of an arbitrator, the party to the dispute who nominated him shall nominate a replacement within 30 days of such death, disability or default. If the party does not nominate a replacement, the arbitration shall proceed with the remaining arbitrators. In the case of the death, disability or default of the Chairman, a replacement shall be nominated in accordance with the provision of paragraphs 1.2 and 2 within 90 days of such death, disability or default.

5. A list of arbitrators shall be maintained by the Secretary-General and composed of qualified persons nominated by the Contracting Parties. Each Contracting Party may designate for inclusion in the list four persons who shall not necessarily be its nationals. If the parties to the dispute have failed within the specified time limits to submit to the Secretary-General an agreed list of qualified persons as provided for in paragraphs 2, 3 and 4, the Secretary-General shall select from the list maintained by him the arbitrator or arbitrators not yet nominated.

#### *Article 4*

The Tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

#### *Article 5*

Each party to the dispute shall be responsible for the costs entailed by the preparation of its own case. The remuneration of the members of the Tribunal and of all general expenses incurred by the arbitration shall be borne equally by the parties to the dispute. The Tribunal shall keep a record of all its expenses and shall furnish a final statement thereof to the parties.

#### *Article 6*

Any contracting Party which has an interest of a legal nature which may be affected by the decision in the case may, after giving written notice to the parties to the dispute which have originally initiated the procedure, intervene in the arbitration procedure with the consent of the Tribunal and at its own expense. Any such intervenor shall have the right to present evidence, briefs and oral argument on the matters giving rise to its intervention, in accordance with procedures established pursuant to article 7 of this Annex, but shall have no rights with respect to the composition of the Tribunal.

#### *Article 7*

A Tribunal established under the provision of this Annex shall decide its own rules of procedure.

#### *Article 8*

1. Unless a Tribunal consists of a single arbitrator, decisions of the Tribunal as to its procedure, its place of meeting, and any question related to the dispute laid before it, shall be taken by majority vote of its members. However, the absence or abstention of any member of the Tribunal who was nominated by a party to the dispute shall not constitute an impediment to the Tribunal reaching a decision. In case of equal voting, the vote of the Chairman shall be decisive.

2. The parties to the dispute shall facilitate the work of the Tribunal and in particular shall, in accordance with their legislation and using all means at their disposal:
  - .1 provide the Tribunal with all necessary documents and information; and
  - .2 enable the Tribunal to enter their territory, to hear witnesses or experts, and to visit the scene.
3. The failure of a party to the dispute to comply with the provisions of paragraph 2 shall not preclude the Tribunal from reaching a decision and rendering an award.

### *Article 9*

The Tribunal shall render its award within five months from the time its is established unless it finds it necessary to extend that time limit for a period not to exceed five months. The award of the Tribunal shall be accompanied by a statement of reasons for the decision. It shall be final and without appeal and shall be communicated to the Secretary-General who shall inform the Contracting Parties. The parties to the dispute shall immediately comply with the award.

## 2. WORLD INTELLECTUAL PROPERTY ORGANIZATION

### (a) PERFORMANCES AND PHONOGRAMS TREATY (1996). DONE AT GENEVA ON 20 DECEMBER 1996.<sup>11</sup>

#### PREAMBLE

*The Contracting Parties,*

*Desiring* to develop and maintain the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible,

*Recognizing* the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

*Recognizing* the profound impact of the development and convergence of information and communication technologies on the production and use of performances and phonograms,

*Recognizing* the need to maintain a balance between the rights of performers and producers of phonograms and the larger public interest, particularly education, research and access to information,

*Have agreed* as follows:

## CHAPTER I

### General provisions

#### *Article 1*

#### RELATION TO OTHER CONVENTIONS

1. Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Pro-

tection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (hereinafter the "Rome Convention").

2. Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.<sup>12</sup>

3. This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

## *Article 2*

### DEFINITIONS

For the purpose of this Treaty:

(a) "Performers" are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(b) "Phonogram" means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;<sup>13</sup>

(c) "Fixation" means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

(d) "Producer of a phonogram" means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;

(e) "Publication" of a fixed performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the rightholder, and provided that copies are offered to the public in reasonable quantity;<sup>14</sup>

(f) "Broadcasting" means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

(g) "Communication to the public" of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of article 15, "communication to the public", includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

## *Article 3*

### BENEFICIARIES OF PROTECTION UNDER THIS TREATY

1. Contracting Parties shall accord the protection provided under this Treaty to the performers and producers of phonograms who are nationals of other Contracting Parties.

2. The nationals of other Contracting Parties shall be understood to be those performers or producers of phonograms who would meet the criteria for eligibility for protection provided under the Rome Convention, were all the Contracting Parties to this Treaty Contracting States of that Convention. In respect of these criteria of eligibility, Contracting Parties shall apply the relevant definitions in article 2 of this Treaty.<sup>15</sup>

3. Any Contracting Party availing itself of the possibilities provided in article 5(3) of the Rome Convention or, for the purpose of article 5 of the same Convention, article 17 thereof shall make a notification as foreseen in those provisions to the Director General of the World Intellectual Property Organization.<sup>16</sup>

#### *Article 4*

#### NATIONAL TREATMENT

1. Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in article 3(2), the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty, and to the right to equitable remuneration provided for in article 15 of this Treaty.

2. The obligation provided for in paragraph (1) does not apply to the extent that another Contracting Party makes use of the reservations permitted by article 15(3) of this Treaty.

### CHAPTER II

#### **Rights of performers**

#### *Article 5*

#### MORAL RIGHTS OF PERFORMERS

1. Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

2. The rights granted to a performer in accordance with paragraph 1 shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.

3. The means of redress for safeguarding the rights granted under this article shall be governed by the legislation of the Contracting Party where protection is claimed.

## *Article 6*

### ECONOMIC RIGHTS OF PERFORMERS IN THEIR UNFIXED PERFORMANCES

Performers shall enjoy the exclusive right of authorizing, as regards their performances:

- (i) The broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and
- (ii) The fixation of their unfixed performances.

## *Article 7*

### RIGHT OF REPRODUCTION

Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in phonograms, in any manner or for.<sup>17</sup>

## *Article 8*

### RIGHT OF DISTRIBUTION

1. Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in phonograms through sale or other transfer of ownership.

2. Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer.<sup>18</sup>

## *Article 9*

### RIGHT OF RENTAL

1. Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in phonograms as determined in the national law of Contracting Parties, even after distribution of them by, or pursuant to, authorization by the performer.

2. Notwithstanding the provisions of paragraph 1, a Contracting Party that, on 15 April 1994, had and continues to have in force a system of equitable remuneration of performers for the rental of copies of their performances fixed in phonograms, may maintain that system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive right of reproduction of performers.<sup>19</sup>

## *Article 10*

### RIGHT OF MAKING AVAILABLE OF FIXED PERFORMANCES

Performers shall enjoy the exclusive right of authorizing the making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

## **CHAPTER III**

### **Rights of producers of phonograms**

## *Article 11*

### RIGHT OF REPRODUCTION

Producers of phonograms shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their phonograms, in any manner or form.<sup>20</sup>

## *Article 12*

### RIGHT OF DISTRIBUTION

1. Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their phonograms through sale or other transfer of ownership.

2. Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph 1 applies after the first sale or other transfer of ownership of the original or a copy of the phonogram with the authorization of the producer of the phonogram.<sup>21</sup>

## *Article 13*

### RIGHT OF RENTAL

1. Producers of phonograms shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their phonograms, even after distribution of them by, or pursuant to, authorization by the producer.

2. Notwithstanding the provisions of paragraph 1, a Contracting Party that, on 15 April 1994, had and continues to have in force a system of equitable remuneration of producers of phonograms for the rental of copies of their phonograms, may maintain that system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive right of reproduction of producers of phonograms.<sup>22</sup>

## *Article 14*

### RIGHT OF MAKING AVAILABLE OF PHONOGRAMS

Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

## **CHAPTER IV**

### **Common provisions**

## *Article 15*

### RIGHT TO REMUNERATION FOR BROADCASTING AND COMMUNICATION TO THE PUBLIC

1. Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.

2. Contracting Parties may establish in their national legislation that the single equitable remuneration shall be claimed from the user by the performer or by the producer of a phonogram or by both. Contracting Parties may enact national legislation that, in the absence of an agreement between the performer and the producer of a phonogram, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

3. Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of paragraph 1 only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply these provisions at all.

4. For the purposes of this Article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they had been published for commercial purposes.<sup>23,26</sup>

## *Article 16*

### LIMITATIONS AND EXCEPTIONS

1. Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers and producers of phonograms as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.



2. Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance or phonogram and do not unreasonably prejudice the legitimate interests of the performer or of the producer of the phonogram.<sup>25,26</sup>

## *Article 17*

### TERM OF PROTECTION

1. The term of protection to be granted to performers under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed in a phonogram.

2. The term of protection to be granted to producers of phonograms under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the phonogram was published, or failing such publication within 50 years from fixation of the phonogram, 50 years from the end of the year in which the fixation was made.

## *Article 18*

### OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law.

## *Article 19*

### OBLIGATIONS CONCERNING RIGHTS MANAGEMENT INFORMATION

1. Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:

- (i) To remove or alter any electronic rights management information with authority;
- (ii) To distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.

2. As used in this article, "rights management information" means information which identifies the performer, the performance of the performer, the producer of the phonogram, the phonogram, the owner of any right in the performance or phonogram, or information about the terms and conditions of use of the performance or phonogram, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a fixed performance or a phonogram or appears in connection with the communication or making available of a fixed performance or a phonogram to the public.<sup>27</sup>

## *Article 20*

### FORMALITIES

The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.

## *Article 21*

### RESERVATIONS

Subject to the provisions of article 15(3), no reservations to this Treaty shall be permitted.

## *Article 22*

### APPLICATION IN TIME

1. Contracting Parties shall apply the provisions of article 18 of the Berne Convention, *mutatis mutandis*, to the rights of performers and producers of phonograms provided for in this Treaty.

2. Notwithstanding paragraph (1), a Contracting Party may limit the application of article 5 of this Treaty to performances which occurred after the entry into force of this Treaty for that Party.

## *Article 23*

### PROVISIONS ON ENFORCEMENT OF RIGHTS

1. Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

2. Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

## CHAPTER V

### Administrative and final clauses

#### *Article 24*

##### ASSEMBLY

1. (a) The Contracting Parties shall have an Assembly.  
(b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.  
(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.
2. (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.  
(b) The Assembly shall perform the function allocated to it under article 26(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.  
(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.
3. (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.  
(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.
4. The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.
5. The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

#### *Article 25*

##### INTERNATIONAL BUREAU

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

## *Article 26*

### ELIGIBILITY FOR BECOMING PARTY TO THE TREATY

1. Any State member of WIPO may become party to this Treaty.
2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.
3. The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

## *Article 27*

### RIGHTS AND OBLIGATIONS UNDER THE TREATY

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

## *Article 28*

### SIGNATURE OF THE TREATY

This Treaty shall be open for signature until December 31, 1997, by any State Member of WIPO and by the European Community.

## *Article 29*

### ENTRY INTO FORCE OF THE TREATY

This Treaty shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director of WIPO.

## *Article 30*

### EFFECTIVE DATE OF BECOMING PARTY TO THE TREATY

This Treaty shall bind

- (i) The 30 States referred to in article 29, from the date on which this Treaty has entered into force;
- (ii) Each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (iii) The European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

(iv) Any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

### *Article 31*

#### DENUNCIATION OF THE TREATY

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

### *Article 32*

#### LANGUAGES OF THE TREATY

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

2. An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purpose of this paragraph, "interested party" means any State member of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

### *Article 33*

#### DEPOSITARY

The Director General of WIPO is the depositary of this Treaty.

### **Provisions of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) (1961) referred to in the WIPO Performances & Phonograms Treaty**

### *Article 4<sup>28</sup>*

#### [PERFORMANCES PROTECTED. POINTS OF ATTACHMENT FOR PERFORMERS]

Each Contracting State shall grant national treatment to performers if any of the following conditions is met:

- (a) The performance takes place in another Contracting State;
- (b) The performance is incorporated in a phonogram which is protected under article 5 of this Convention;

(c) The performance, not being fixed on a phonogram, is carried by a broadcast which is protected by article 6 of this Convention.

### *Article 5<sup>29</sup>*

[PROTECTED PHONOGRAMS; 1. POINTS OF ATTACHMENT FOR PRODUCERS OF PHONOGRAMS; 2. SIMULTANEOUS PUBLICATION; 3. POWER TO EXCLUDE CERTAIN CRITERIA]

1. Each Contracting State shall grant national treatment to producers of phonograms if any of the following conditions is met:

(a) The producer of the phonogram is a national of another Contracting State (criterion of nationality);

(b) The first fixation of the sound was made in another Contracting State (criterion of fixation);

(c) The phonogram was first published in another Contracting State (criterion of publication).

2. If a phonogram was first published in a non-contracting State but if it was also published, within thirty days of its first publication, in a Contracting State (simultaneous publication), it shall be considered as first published in the Contracting State.

3. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will not apply the criterion of publication or, alternatively, the criterion of fixation. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.<sup>30</sup>

### *Article 16<sup>31</sup>*

[RESERVATIONS]

1. Any State, upon becoming party to this Convention, shall be bound by all the obligations and shall enjoy all the benefits thereof. However, a State may at any time, in a notification deposited with the Secretary-General of the United Nations, declare that:

(a) As regards Article 12:

(i) It will not apply the provisions of that Article;

(ii) It will not apply the provisions of that Article in respect of certain uses;

(iii) As regards phonograms the producer of which is not a national of another Contracting State, it will apply that Article;

(iv) As regards phonograms the producer of which is not a national of another Contracting State, it will limit the protection provided for by that Article to the extent to which, and to the term for which, the latter State grants protection to phonograms first fixed by a national of the State making the declaration; however, the fact that the Con-

tracting State of which the producer is a national does not grant the protection to the same beneficiary or beneficiaries as the State making the declaration shall not be considered as a difference in the extent of the protection...

#### *Article 17<sup>32</sup>*

##### [CERTAIN COUNTRIES APPLYING ONLY THE "FIXATION" CRITERION]

Any State which, on 26 October 1961, grants protection to producers of phonograms solely on the basis of the criterion of fixation may, by a notification deposited with the Secretary-General of the United Nations at the time of ratification, acceptance or accession, declare that it will apply, for the purposes of Article 5, the criterion of fixation alone and, for the purposes of paragraph 1(a)(iii) and (iv) of Article 16, the criterion of fixation instead of the criterion of nationality.

#### *Article 18<sup>33</sup>*

##### [WITHDRAWAL OF RESERVATIONS]

Any State which has deposited a notification under paragraph 3 of article 5, paragraph 2 of article 6, paragraph 1 of article 16 or article 17, may, by a further notification deposited with the Secretary-General of the United Nations, reduce its scope or withdraw it.

#### (b) COPYRIGHT TREATY (1966). DONE AT GENEVA ON 20 DECEMBER, 1966<sup>34</sup>

##### *Preamble*

###### *The Contracting Parties,*

*Desiring* to develop and maintain the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible,

*Recognizing* the need to introduce new international rules and clarify the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by new economic, social, cultural and technological developments,

*Recognizing* the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works,

*Emphasizing* the outstanding significance of copyright protection as an incentive for literary and artistic creation,

*Recognizing* the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention,

*Have agreed* as follows:

## *Article 1*

### RELATION TO THE BERNE CONVENTION

1. This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention. This Treaty shall not have any connection with treaties other than the Berne Convention, nor shall it prejudice any rights and obligations under any other treaties.

2. Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the Berne Convention for the Protection of literary and Artistic Works.

3. Hereinafter, "Berne Convention" shall refer to the Paris Act of 24 July, 1971, of the Berne Convention for the Protection of Literary and Artistic Works.

4. Contracting Parties shall comply with articles 1 to 21 and the Appendix of the Berne Convention.<sup>35</sup>

## *Article 2*

### SCOPE OF COPYRIGHT PROTECTION

Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

## *Article 3*

### APPLICATION OF ARTICLES 2 TO 6 OF THE BERNE CONVENTION

Contracting Parties shall apply *mutatis mutandis* the provisions of articles 2 to 6 of the Berne Convention in respect of the protection provided for in this Treaty.<sup>36</sup>

## *Article 4*

### COMPUTER PROGRAMS

Computer programs are protected as literary works within the meaning of article 2 of the Berne Convention. Such protection applies to computer programs, whatever may be the mode or form of their expression.<sup>37</sup>

## *Article 5*

### COMPILATIONS OF DATA (DATABASES)

Compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, are protected as such. This protection does not extend to the data or the material itself and is without prejudice to any copyright subsisting in the data or material contained in the compilation.<sup>38</sup>



## Article 6

### RIGHT OF DISTRIBUTION

1. Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership.

2. Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph 1 applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author.<sup>39</sup>

## Article 7

### RIGHT OF RENTAL

1. Authors of

- (i) Computer programs;
- (ii) Cinematographic works; and
- (iii) Works embodied in phonograms, as determined in the national law of Contracting Parties,

shall enjoy the exclusive right of authorizing commercial rental to the public of the originals or copies of their works.

2. Paragraph (1) shall not apply

- (i) In the case of computer programs, where the program itself is not the essential object of the rental; and
- (ii) In the case of cinematographic works, unless such commercial rental has led to widespread copying of such works materially impairing the exclusive right of reproduction

3. Notwithstanding the provisions of paragraph 1, a Contracting Party that, on 15 April 1994, had and continues to have in force a system of equitable remuneration of authors for the rental of copies of their works embodied in phonograms may maintain that system provided that the commercial rental of works embodied in phonograms in not giving rise to the material impairment of the exclusive right of reproduction of authors.<sup>40,41</sup>

## Article 8

### RIGHT OF COMMUNICATION TO THE PUBLIC

Without prejudice to the provisions of articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii) and 14bis(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.<sup>42</sup>

## *Article 9*

### DURATION OF THE PROTECTION OF PHOTOGRAPHIC WORKS

In respect of photographic works, the Contracting Parties shall not apply the provisions of article 7(4) of the Berne Convention.

## *Article 10*

### LIMITATIONS AND EXCEPTIONS

1. Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

2. Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.<sup>43</sup>

## *Article 11*

### OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.

## *Article 12*

### OBLIGATIONS CONCERNING RIGHTS MANAGEMENT INFORMATION

1. Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention:

- (i) To remove or alter any electronic rights management information without authority;
- (ii) To distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.

2. As used in this article, "rights management information" means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work,

and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.<sup>44</sup>

### *Article 13*

#### APPLICATION IN TIME

Contracting Parties shall apply the provisions of Article 18 of the Berne Convention to all protection provided for in this Treaty.

### *Article 14*

#### PROVISIONS ON ENFORCEMENT OF RIGHTS

1. Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

2. Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringements.

### *Article 15*

#### ASSEMBLY

1. (a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the World Intellectual Property Organization to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

2. (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under article 17(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

3. (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its member States exercises its right to vote and vice versa.

4. The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.

5. The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

### *Article 16*

#### INTERNATIONAL BUREAU

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

### *Article 17*

#### ELIGIBILITY FOR BECOMING PARTY TO THE TREATY

1. Any Member State of WIPO may become party to this Treaty.

2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

3. The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

### *Article 18*

#### RIGHTS AND OBLIGATIONS UNDER THE TREATY

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

### *Article 19*

#### SIGNATURE OF THE TREATY

This Treaty shall be open for signature until December 31, 1997, by any Member State of WIPO and by the European Community.

## *Article 20*

### ENTRY INTO FORCE OF THE TREATY

This Treaty shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

## *Article 21*

### EFFECTIVE DATE OF BECOMING PARTY TO THE TREATY

This Treaty shall bind:

- (i) The 30 States referred to in article 20, from the date on which this Treaty has entered into force;
- (ii) Each other State, from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (iii) The European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to article 20, or, three months after the entry into force of this Treaty if such instrument has deposited before the entry into force of this Treaty;
- (iv) Any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

## *Article 22*

### NO RESERVATIONS TO THE TREATY

No reservation to this Treaty shall be admitted.

## *Article 23*

### DENUNCIATION OF THE TREATY

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received its notification.

## *Article 24*

### LANGUAGES OF THE TREATY

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

2. An official text in any language other than those referred to in paragraph 1 shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

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#### NOTES

<sup>1</sup> Entered into force on 26 July 1999.

<sup>2</sup> Agreement adopted by the Inland Transportation Committee of the fifty-eighth session of Economic for Europe at Geneva 15-19 January 1996. ECE/TRANS/120 and Corr.1.

<sup>3</sup> Entered into force on 3 December 1998.

<sup>4</sup> Conference of the State of the States Parties doc. CCW/CONF.1/16 (Part I).

<sup>5</sup> Not yet in force.

<sup>6</sup> Depositary notification CN.293.1996 Treaties-1 of 30 October 1996.

<sup>7</sup> Not yet in force.

<sup>8</sup> United Nations doc. A/50/1027, annex.

<sup>9</sup> International Legal Materials, vol. 35, No. 6 (1996), p. 1433; see also chap. III.B.8 of this Yearbook. Not yet in force.

<sup>10</sup> International Legal Materials, vol. 36 (1977), p. 7.

<sup>11</sup> World Intellectual Property Organization publication No. 227(E).

<sup>12</sup> Agreed statement concerning article 1(2): It is understood that article 1(2) clarifies the relationship between rights in phonograms under this Treaty and copyright in works embodied in the phonograms. In cases where authorization is needed from both the author of a work embodied in the phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required, and vice versa.

It is further understood that nothing in article 1(2) precludes a Contracting Party from providing exclusive rights to a performer or producer of phonograms beyond those required to be provided under this Treaty.

<sup>13</sup> Agreed statement concerning article 2(b): It is understood that the definition of phonogram provided in article 2(b) does not suggest that rights in the phonogram are in any way affected through their incorporation into a cinematographic or other audiovisual work.

<sup>14</sup> Agreed statement concerning articles 2(e), 8, 9, 12, and 13: As used in these articles, the expressions "copies" and "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>15</sup> Agreed statement concerning article 3(2): For the application of article 3(2), it is understood that fixation means the finalization of the master tape ("bande-mère").

<sup>16</sup> Agreed statement concerning article 3: It is understood that the reference in articles 5(a) and 16(a) (iv) of the Rome Convention to "national of another Contracting State" will, when applied to this Treaty, mean, in regard to an intergovernmental organization that is a Contracting Party to this Treaty, a national of one of the countries that is a member of that organization.

<sup>17</sup> Agreed statement concerning articles 7, 11 and 16: The reproduction right, as set out in articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

<sup>18</sup> Agreed statement concerning articles 2(e), 8, 9, 12, and 13: As used in these Articles, the expressions "copies" and "original and copies" being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>19</sup> Agreed statement concerning articles 2(e), 8, 9, 12, and 13: As used in these articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>20</sup> Agreed statement concerning articles 7, 11 and 16: The reproduction rights, as set out in articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

<sup>21</sup> Agreed statement concerning articles 2(e), 8, 9, 12, and 13: As used in these Articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>22</sup> Agreed statement concerning articles 2(e), 8, 9, 12, and 13: As used in these Articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>23</sup> Agreed statement concerning article 15: It is understood that article 15 does not represent a complete resolution of the level of rights of broadcasting and communication to the public that should be enjoyed by performers and phonogram producers in the digital age. Delegations were unable to achieve consensus on differing proposals for aspects of exclusively to be provided in certain circumstances or for rights to be provided without the possibility of reservations, and have therefore left the issue to future resolution.

<sup>24</sup> Agreed statement concerning article 15: It is understood that article 15 does not prevent the granting of the right conferred by this Article to performers of folklore and producers of phonograms recording folklore where such phonograms have not been published for commercial gain.

<sup>25</sup> Agreed statement concerning articles 7, 11 and 16: The reproduction right, as set out in articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

<sup>26</sup> Agreed statement concerning article 16: The agreed statement concerning Article 10 (on limitations and exceptions) of the WIPO Copyright Treaty is applicable *mutatis mutandis* also to Article 16 (on Limitations and Exceptions) of the WIPO Performances and Phonograms Treaty. [The text of the agreed statement concerning Article 10 of the WIPO Copyright Treaty reads as follows: “It is understood that the provisions of article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.

“It is also understood that article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.”]

<sup>27</sup> Agreed statement concerning article 19: The agreed statement concerning article 12 (on obligations concerning rights management information) of the WIPO Copyright Treaty is applicable *mutatis mutandis* also to Article 19 (on obligations concerning rights management information) of the WIPO Performances and Phonograms Treaty. [The text of the agreed statement concerning Article 12 of the WCT reads as follows: “It is understood that the reference to ‘infringement of any right covered by this Treaty or the Berne Convention’ includes both exclusive rights and rights of remuneration.

“It is further understood that Contracting Parties will not rely on this Article to devise or implement rights management systems that would have the effect of imposing formalities which are not permitted under the Berne Convention or this Treaty, prohibiting the free movement of goods or impeding the enjoyment of rights under this Treaty.”]

<sup>28</sup> Articles have been given titles to facilitate their identification. There are no titles in the signed text.

<sup>29</sup> Articles 4 and 5 of the Rome Convention are referred to in article 3(2) of the WIPO Performances and Phonograms Treaty by the words "criteria for eligibility for protection provided for in the Rome Convention".

<sup>30</sup> Paragraph 3 of article 5 of the Rome Convention is referred to in article 3(3) of the WPPT.

<sup>31</sup> Article 16(1) (a) (iii) and (iv) of the Rome Convention are referred to in article 17 of the same Convention.

<sup>32</sup> Article 17 of the Rome Convention is referred to in article 3(3) of WPPT.

<sup>33</sup> Article 18 of the Rome Convention is referring to article 17 of the same Convention.

<sup>34</sup> World Intellectual Property Organization publication No. 226(E).

<sup>35</sup> Agreed statement concerning article 1(4): The reproduction as set out in article 9 of the Berne Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of article 9 of the Berne Convention.

<sup>36</sup> Agreed statement concerning article 3: It is understood that, in applying article 3 of this Treaty, the expression "country of the Union" in articles 2 to 6 of the Berne Convention will be read as if it were a reference to a Contracting Party to this Treaty, in the application of those Berne articles in respect of protection provided for in this Treaty. It is also understood that the expression "country outside the Union" in those articles in the Berne Convention will, in the same circumstances, be read as if it were a reference to a country that is not a Contracting Party to this Treaty, and that "this Convention" in articles 2(8), 2bis(2), 3, 4 and 5 of the Berne Convention will be read as if it were a reference to the Berne Convention and this Treaty. Finally, it is understood that a reference in articles 3 to 6 of the Berne Convention to a "national of one of the countries of the Union" will, when these Articles are applied to this Treaty, mean, in regard to an intergovernmental organization that is a Contracting Party to this Treaty, a national of one of the countries that is member of that organization.

<sup>37</sup> Agreed statement concerning article 4: The scope of protection for computer programs under article 4 of this Treaty read with article 2, is consistent with article 2 of the Berne Convention and on a par with the relevant provisions of the TRIPS Agreement.

<sup>38</sup> Agreed statement concerning Article 5: The scope of protection for compilations of data (databases) under article 5 of this Treaty, read with article 2, in consistent with Article 2 of the Berne Convention and on a par with the relevant provisions of the TRIPS Agreement.

<sup>39</sup> Agreed statement concerning articles 6 and 7: As used in these articles, the expressions "copies" and "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>40</sup> Agreed statement concerning articles 6 and 7: As used in these articles, the expressions "copies" and "original and copies" being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>41</sup> Agreed statement concerning article 7: It is understood that the obligation under article 7(1) does not require a Contracting Party to provide an exclusive right of commercial rental to authors who, under that Contracting Party's law, are not granted rights in respect of phonograms. It is understood that this obligation is consistent with article 14(4) of the TRIPS Agreement.

<sup>42</sup> Agreed statement concerning article 8: It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Treaty or the Berne Convention. It is further understood that nothing in article 8 precludes a Contracting Party from applying article 11bis(2).

<sup>43</sup> Agreed statement concerning article 10: It is understood that the provisions of article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.



It is also understood that article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.

<sup>44</sup> Agreed statement concerning article 12: It is understood that the reference to “infringement of any right covered by this Treaty or the Berne Convention” includes both exclusive rights and rights of remuneration.

It is further understood that Contracting Parties will not rely on this article to devise or implement rights management systems that would have the effect of imposing formalities which are not permitted under the Berne Convention or this Treaty, prohibiting the free movement of goods or impeding the enjoyment of rights under this Treaty.