

Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

2009

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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Chapter IV

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

A. TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS

[No treaty concerning international law was concluded under the auspices of the United Nations in 2009.]

B. TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

1. International Civil Aviation Organization

- (a) CONVENTION ON COMPENSATION FOR DAMAGE TO THIRD PARTIES, RESULTING FROM ACTS OF UNLAWFUL INTERFERENCE INVOLVING AIRCRAFT. MONTRÉAL, 2 MAY 2009^{*}

The States Parties to this Convention,

Recognizing the serious consequences of acts of unlawful interference with aircraft which cause damage to third parties and to property;

Recognizing that there are currently no harmonized rules relating to such consequences;

Recognizing the importance of ensuring protection of the interests of third-party victims and the need for equitable compensation, as well as the need to protect the aviation industry from the consequences of damage caused by unlawful interference with aircraft;

Considering the need for a coordinated and concerted approach to providing compensation to third-party victims, based on cooperation between all affected parties;

Reaffirming the desirability of the orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944; and

^{*} Adopted at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization in Montréal from 20 April to 2 May 2009

Convinced that collective State action for harmonization and codification of certain rules governing compensation for the consequences of an event of unlawful interference with aircraft in flight through a new Convention is the most desirable and effective means of achieving an equitable balance of interests;

Have agreed as follows:

CHAPTER I. PRINCIPLES

Article 1. Definitions

For the purposes of this Convention:

(a) an “act of unlawful interference” means an act which is defined as an offence in the Convention for the Suppression of Unlawful Seizure of Aircraft, Signed at The Hague on 16 December 1970, or the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Signed at Montréal on 23 September 1971, and any amendment in force at the time of the event;

(b) an “event” occurs when damage results from an act of unlawful interference involving an aircraft in flight;

(c) an aircraft is considered to be “in flight” at any time from the moment when all its external doors are closed following embarkation or loading until the moment when any such door is opened for disembarkation or unloading;

(d) “international flight” means any flight whose place of departure and whose intended destination are situated within the territories of two States, whether or not there is a break in the flight, or within the territory of one State if there is an intended stopping place in the territory of another State;

(e) “maximum mass” means the maximum certificated take-off mass of the aircraft, excluding the effect of lifting gas when used;

(f) “operator” means the person who makes use of the aircraft, provided that if control of the navigation of the aircraft is retained by the person from whom the right to make use of the aircraft is derived, whether directly or indirectly, that person shall be considered the operator. A person shall be considered to be making use of an aircraft when he or she is using it personally or when his or her servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority. The operator shall not lose its status as operator by virtue of the fact that another person commits an act of unlawful interference;

(g) “person” means any natural or legal person, including a State;

(h) “senior management” means members of an operator’s supervisory board, members of its board of directors, or other senior officers of the operator who have the authority to make and have significant roles in making binding decisions about how the whole of or a substantial part of the operator’s activities are to be managed or organized;

(i) “State Party” means a State for which this Convention is in force; and

(j) “third party” means a person other than the operator, passenger or consignor or consignee of cargo.

Article 2. Scope

1. This Convention applies to damage to third parties which occurs in the territory of a State Party caused by an aircraft in flight on an international flight, as a result of an act of unlawful interference. This Convention shall also apply to such damage that occurs in a State non-Party as provided for in Article 28.

2. If a State Party so declares to the Depositary, this Convention shall also apply to damage to third parties that occurs in the territory of that State Party which is caused by an aircraft in flight other than on an international flight, as a result of an act of unlawful interference.

3. For the purposes of this Convention:

(a) damage to a ship in or an aircraft above the High Seas or the Exclusive Economic Zone shall be regarded as damage occurring in the territory of the State in which it is registered; however, if the operator of the aircraft has its principal place of business in the territory of a State other than the State of Registry, the damage to the aircraft shall be regarded as having occurred in the territory of the State in which it has its principal place of business; and

(b) damage to a drilling platform or other installation permanently fixed to the soil in the Exclusive Economic Zone or the Continental Shelf shall be regarded as having occurred in the territory of the State Party which has jurisdiction over such platform or installation in accordance with international law, including the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

4. This Convention shall not apply to damage caused by State aircraft. Aircraft used in military, customs and police services shall be deemed to be State aircraft.

CHAPTER II. LIABILITY OF THE OPERATOR AND RELATED ISSUES

Article 3. Liability of the operator

1. The operator shall be liable to compensate for damage within the scope of this Convention upon condition only that the damage was caused by an aircraft in flight.

2. There shall be no right to compensation under this Convention if the damage is not a direct consequence of the event giving rise thereto.

3. Damages due to death, bodily injury and mental injury shall be compensable. Damages due to mental injury shall be compensable only if caused by a recognizable psychiatric illness resulting either from bodily injury or from direct exposure to the likelihood of imminent death or bodily injury.

4. Damage to property shall be compensable.

5. Environmental damage shall be compensable, in so far as such compensation is provided for under the law of the State in the territory of which the damage occurred.

6. No liability shall arise under this Convention for damage caused by a nuclear incident as defined in the Paris Convention on Third Party Liability in the Field of Nuclear Energy (29 July 1960) or for nuclear damage as defined in the Vienna Convention on Civil Liability for Nuclear Damage (21 May 1963), and any amendment or supplements to these Conventions in force at the time of the event.

7. Punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 4. Limit of the operator's liability

1. The liability of the operator arising under Article 3 shall not exceed for an event the following limit based on the mass of the aircraft involved:

(a) 750 000 Special Drawing Rights for aircraft having a maximum mass of 500 kilogrammes or less;

(b) 1 500 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 kilogrammes but not exceeding 1 000 kilogrammes;

(c) 3 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 1 000 kilogrammes but not exceeding 2 700 kilogrammes;

(d) 7 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 2 700 kilogrammes but not exceeding 6 000 kilogrammes;

(e) 18 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 6 000 kilogrammes but not exceeding 12 000 kilogrammes;

(f) 80 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 12 000 kilogrammes but not exceeding 25 000 kilogrammes;

(g) 150 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 25 000 kilogrammes but not exceeding 50 000 kilogrammes;

(h) 300 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 50 000 kilogrammes but not exceeding 200 000 kilogrammes;

(i) 500 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 200 000 kilogrammes but not exceeding 500 000 kilogrammes;

(j) 700 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 000 kilogrammes.

2. If an event involves two or more aircraft operated by the same operator, the limit of liability in respect of the aircraft with the highest maximum mass shall apply.

Article 5. Events involving two or more operators

1. Where two or more aircraft have been involved in an event causing damage to which this Convention applies, the operators of those aircraft are jointly and severally liable for any damage suffered by a third party.

2. If two or more operators are so liable, the recourse between them shall depend on their respective limits of liability and their contribution to the damage.

3. No operator shall be liable for a sum in excess of the limit, if any, applicable to its liability.

Article 6. Advance payments

If required by the law of the State where the damage occurred, the operator shall make advance payments without delay to natural persons who may be entitled to claim compensation under this Convention, in order to meet their immediate economic needs.

Such advance payments shall not constitute a recognition of liability and may be offset against any amount subsequently payable as damages by the operator.

Article 7. Insurance

1. Having regard to Article 4, States Parties shall require their operators to maintain adequate insurance or guarantee covering their liability under this Convention. If such insurance or guarantee is not available to an operator on a per event basis, the operator may satisfy this obligation by insuring on an aggregate basis. States Parties shall not require their operators to maintain such insurance or guarantee to the extent that they are covered by a decision made pursuant to Article 11, paragraph 1(e) or Article 18, paragraph 3.

2. An operator may be required by the State Party in or into which it operates to furnish evidence that it maintains adequate insurance or guarantee. In doing so, the State Party shall apply the same criteria to operators of other States Parties as it applies to its own operators. Proof that an operator is covered by a decision made pursuant to Article 11, paragraph 1(e) or Article 18, paragraph 3, shall be sufficient evidence for the purpose of this paragraph.

CHAPTER III. THE INTERNATIONAL CIVIL AVIATION COMPENSATION FUND

Article 8. The constitution and objectives of the International Civil Aviation Compensation Fund

1. An organization named the International Civil Aviation Compensation Fund, hereinafter referred to as “the International Fund,” is established by this Convention. The International Fund shall be made up of a Conference of Parties, consisting of the States Parties, and a Secretariat headed by a Director.

2. The International Fund shall have the following purposes:

(a) to provide compensation for damage according to Article 18, paragraph 1, pay damages according to Article 18, paragraph 3, and provide financial support under Article 28;

(b) to decide whether to provide supplementary compensation to passengers on board an aircraft involved in an event, according to Article 9, paragraph (j);

(c) to make advance payments under Article 19, paragraph 1, and to take reasonable measures after an event to minimize or mitigate damage caused by an event, according to Article 19, paragraph 2; and

(d) to perform other functions compatible with these purposes.

3. The International Fund shall have its seat at the same place as the International Civil Aviation Organization.

4. The International Fund shall have international legal personality.

5. In each State Party, the International Fund shall be recognized as a legal person capable under the laws of that State of assuming rights and obligations, entering into contracts, acquiring and disposing of movable and immovable property and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director of the International Fund as the legal representative of the International Fund.

6. The International Fund shall enjoy tax exemption and such other privileges as are agreed with the host State. Contributions to the International Fund and its funds, and any proceeds from them, shall be exempted from tax in all States Parties.

7. The International Fund shall be immune from legal process, except in respect of actions relating to credits obtained in accordance with Article 17 or to compensation payable in accordance with Article 18. The Director of the International Fund shall be immune from legal process in relation to acts performed by him or her in his or her official capacity. The immunity of the Director may be waived by the Conference of Parties. The other personnel of the International Fund shall be immune from legal process in relation to acts performed by them in their official capacity. The immunity of the other personnel may be waived by the Director.

8. Neither a State Party nor the International Civil Aviation Organization shall be liable for acts, omissions or obligations of the International Fund.

Article 9. The Conference of Parties

The Conference of Parties shall:

- (a) determine its own rules of procedure and, at each meeting, elect its officers;
- (b) establish the Regulations of the International Fund and the Guidelines for Compensation;
- (c) appoint the Director and determine the terms of his or her employment and, to the extent this is not delegated to the Director, the terms of employment of the other employees of the International Fund;
- (d) delegate to the Director, in addition to powers given in Article 11, such powers and authority as may be necessary or desirable for the discharge of the duties of the International Fund and revoke or modify such delegations of powers and authority at any time;
- (e) decide the period for, and the amount of, initial contributions and fix the contributions to be made to the International Fund for each year until the next meeting of the Conference of Parties;
- (f) in the case where the aggregate limit on contributions under Article 14, paragraph 3, has been applied, determine the global amount to be disbursed to the victims of all events occurring during the time period with regard to which Article 14, paragraph 3, was applied;
- (g) appoint the auditors;
- (h) vote budgets and determine the financial arrangements of the International Fund including the Guidelines on Investment, review expenditures, approve the accounts of the International Fund, and consider the reports of the auditors and the comments of the Director thereon;
- (i) examine and take appropriate action on the reports of the Director, including reports on claims for compensation, and decide on any matter referred to it by the Director;
- (j) decide whether and in what circumstances supplementary compensation may be payable by the International Fund to passengers on board an aircraft involved in an event

in circumstances where the damages recovered by passengers according to applicable law did not result in the recovery of compensation commensurate with that available to third parties under this Convention. In exercising this discretion, the Conference of Parties shall seek to ensure that passengers and third parties are treated equally;

(k) establish the Guidelines for the application of Article 28, decide whether to apply Article 28 and set the maximum amount of such assistance;

(l) determine which States non-Party and which intergovernmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Conference of Parties and subsidiary bodies;

(m) establish any body necessary to assist it in its functions, including, if appropriate, an Executive Committee consisting of representatives of States Parties, and define the powers of such body;

(n) decide whether to obtain credits and grant security for credits obtained pursuant to Article 17, paragraph 4;

(o) make such determinations as it sees fit under Article 18, paragraph 3;

(p) enter into arrangements on behalf of the International Fund with the International Civil Aviation Organization;

(q) request the International Civil Aviation Organization to assume an assistance, guidance and supervisory role with respect to the International Fund as far as the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944, are concerned. ICAO may assume these tasks in accordance with pertinent decisions of its Council;

(r) as appropriate, enter into arrangements on behalf of the International Fund with other international bodies; and

(s) consider any matter relating to this Convention that a State Party or the International Civil Aviation Organization has referred to it.

Article 10. The meetings of the Conference of Parties

1. The Conference of Parties shall meet once a year, unless a Conference of Parties decides to hold its next meeting at another interval. The Director shall convene the meeting at a suitable time and place.

2. An extraordinary meeting of the Conference of Parties shall be convened by the Director:

(a) at the request of no less than one-fifth of the total number of States Parties;

(b) if an aircraft has caused damage falling within the scope of this Convention, and the damages are likely to exceed the applicable limit of liability according to Article 4 by more than 50 per cent of the available funds of the International Fund;

(c) if the aggregate limit on contributions according to Article 14, paragraph 3, has been reached; or

(d) if the Director has exercised the authority according to Article 11, paragraph 1 (d) or (e).

3. All States Parties shall have an equal right to be represented at the meetings of the Conference of Parties and each State Party shall be entitled to one vote. The International Civil Aviation Organization shall have the right to be represented, without voting rights, at the meetings of the Conference of Parties.

4. A majority of the States Parties is required to constitute a quorum for the meetings of the Conference of Parties. Decisions of the Conference of Parties shall be taken by a majority vote of the States Parties present and voting. Decisions under Article 9, subparagraphs (a), (b), (c), (d), (e), (k), (m), (n) and (o) shall be taken by a two-thirds majority of the States Parties present and voting.

5. Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly impair the ability of the International Fund to perform its functions, request the Director to convene an extraordinary meeting of the Conference of Parties. The Director may convene the Conference of Parties to meet not later than sixty days after receipt of the request.

6. The Director may convene, on his or her own initiative, an extraordinary meeting of the Conference of Parties to meet within sixty days after the deposit of any instrument of denunciation, if he or she considers that such denunciation will significantly impair the ability of the International Fund to perform its functions.

7. If the Conference of Parties at an extraordinary meeting convened in accordance with paragraph 5 or 6 decides by a two-thirds majority of the States Parties present and voting that the denunciation will significantly impair the ability of the International Fund to perform its functions, any State Party may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Convention with effect from that same date.

Article 11. The Secretariat and the Director

1. The International Fund shall have a Secretariat led by a Director. The Director shall hire personnel, supervise the Secretariat and direct the day-to-day activities of the International Fund. In addition, the Director:

(a) shall report to the Conference of Parties on the functioning of the International Fund and present its accounts and a budget;

(b) shall collect all contributions payable under this Convention, administer and invest the funds of the International Fund in accordance with the Guidelines on Investment, maintain accounts for the funds, and assist in the auditing of the accounts and the funds in accordance with Article 17;

(c) shall handle claims for compensation in accordance with the Guidelines for Compensation, and prepare a report for the Conference of Parties on how each has been handled;

(d) may decide to temporarily take action under Article 19 until the next meeting of the Conference of Parties;

(e) shall decide to temporarily take action under Article 18, paragraph 3, until the next meeting of the Conference of Parties called in accordance with Article 10, paragraph 2 (d);

(f) shall review the sums prescribed under Articles 4 and 18 and inform the Conference of Parties of any revision to the limits of liability in accordance with Article 31; and

(g) shall discharge any other duties assigned to him or her by or under this Convention and decide any other matter delegated by the Conference of Parties.

2. The Director and the other personnel of the Secretariat shall not seek or receive instructions in regard to the discharge of their responsibilities from any authority external to the International Fund. Each State Party undertakes to fully respect the international character of the responsibilities of the personnel and not seek to influence any of its nationals in the discharge of their responsibilities.

Article 12. Contributions to the International Fund

1. The contributions to the International Fund shall be:

(a) the mandatory amounts collected in respect of each passenger and each tonne of cargo departing on an international commercial flight from an airport in a State Party. Where a State Party has made a declaration under Article 2, paragraph 2, such amounts shall also be collected in respect of each passenger and each tonne of cargo departing on a commercial flight between two airports in that State Party; and

(b) such amounts as the Conference of Parties may specify in respect of general aviation or any sector thereof.

The operator shall collect these amounts and remit them to the International Fund.

2. Contributions collected in respect of each passenger and each tonne of cargo shall not be collected more than once in respect of each journey, whether or not that journey includes one or more stops or transfers.

Article 13. Basis for fixing the contributions

1. Contributions shall be fixed having regard to the following principles:

(a) the objectives of the International Fund should be efficiently achieved;

(b) competition within the air transport sector should not be distorted;

(c) the competitiveness of the air transport sector in relation to other modes of transportation should not be adversely affected; and

(d) in relation to general aviation, the costs of collecting contributions shall not be excessive in relation to the amount of such contributions, taking into account the diversity that exists in this sector.

2. The Conference of Parties shall fix contributions in a manner that does not discriminate between States, operators, passengers and consignors or consignees of cargo.

3. On the basis of the budget drawn up according to Article 11, paragraph 1 (a), the contributions shall be fixed having regard to:

(a) the upper limit for compensation set out in Article 18, paragraph 2;

(b) the need for reserves where Article 18, paragraph 3, is applied;

(c) claims for compensation, measures to minimize or mitigate damages and financial assistance under this Convention;

- (d) the costs and expenses of administration, including the costs and expenses incurred by meetings of the Conference of Parties;
- (e) the income of the International Fund; and
- (f) the availability of additional funds for compensation pursuant to Article 17, paragraph 4.

Article 14. Period and rate of contributions

1. At its first meeting, the Conference of Parties shall decide the period and the rate of contributions in respect of passengers and cargo departing from a State Party to be made from the time of entry into force of this Convention for that State Party. If a State Party makes a declaration under Article 2, paragraph 2, initial contributions shall be paid in respect of passengers and cargo departing on flights covered by such declaration from the time it takes effect. The period and the rate shall be equal for all States Parties.

2. Contributions shall be fixed in accordance with paragraph 1 so that the funds available amount to 100 per cent of the limit of compensation set out in Article 18, paragraph 2, within four years. If the funds available are deemed sufficient in relation to the likely compensation or financial assistance to be provided in the foreseeable future and amount to 100 per cent of that limit, the Conference of Parties may decide that no further contributions shall be made until the next meeting of the Conference of Parties, provided that both the period and rate of contributions shall be applied in respect of passengers and cargo departing from a State in respect of which this Convention subsequently enters into force.

3. The total amount of contributions collected by the International Fund within any period of two consecutive calendar years shall not exceed three times the maximum amount of compensation according to Article 18, paragraph 2.

4. Subject to Article 28, the contributions collected by an operator in respect of a State Party may not be used to provide compensation for an event which occurred in its territory prior to the entry into force of this Convention for that State Party.

Article 15. Collection of the contributions

1. The Conference of Parties shall establish in the Regulations of the International Fund a transparent, accountable and cost-effective mechanism supporting the collection, remittance and recovery of contributions. When establishing the mechanism, the Conference of Parties shall endeavour not to impose undue burdens on operators and contributors to the funds of the International Fund. Contributions which are in arrears shall bear interest as provided for in the Regulations.

2. Where an operator does not collect or does not remit contributions it has collected to the International Fund, the International Fund shall take appropriate measures against such operator with a view to the recovery of the amount due. Each State Party shall ensure that an action to recover the amount due may be taken within its jurisdiction, notwithstanding in which State Party the debt actually accrued.

Article 16. Duties of States Parties

1. Each State Party shall take appropriate measures, including imposing such sanctions as it may deem necessary, to ensure that an operator fulfils its obligations to collect and remit contributions to the International Fund.

2. Each State Party shall ensure that the following information is provided to the International Fund:

(a) the number of passengers and quantity of cargo departing on international commercial flights from that State Party;

(b) such information on general aviation flights as the Conference of Parties may decide; and

(c) the identity of the operators performing such flights.

3. Where a State Party has made a declaration under Article 2, paragraph 2, it shall ensure that information detailing the number of passengers and quantity of cargo departing on commercial flights between two airports in that State Party, such information on general aviation flights as the Conference of Parties may decide, and the identity of the operators performing such flights, are also provided. In each case, such statistics shall be *prima facie* evidence of the facts stated therein.

4. Where a State Party does not fulfil its obligations under paragraphs 2 and 3 of this Article and this results in a shortfall in contributions for the International Fund, the State Party shall be liable for such shortfall. The Conference of Parties shall, on recommendation by the Director, decide whether the State Party shall pay for such shortfall.

Article 17. The funds of the International Fund

1. The funds of the International Fund may only be used for the purposes set out in Article 8, paragraph 2.

2. The International Fund shall exercise the highest degree of prudence in the management and preservation of its funds. The funds shall be preserved in accordance with the Guidelines on Investment determined by the Conference of Parties under Article 9, subparagraph (h). Investments may only be made in States Parties.

3. Accounts shall be maintained for the funds of the International Fund. The auditors of the International Fund shall review the accounts and report on them to the Conference of Parties.

4. Where the International Fund is not able to meet valid compensation claims because insufficient contributions have been collected, it may obtain credits from financial institutions for the payment of compensation and may grant security for such credits.

CHAPTER IV. COMPENSATION FROM THE INTERNATIONAL FUND

Article 18. Compensation

1. The International Fund shall, under the same conditions as are applicable to the liability of the operator, provide compensation to persons suffering damage in the territory of a State Party. Where the damage is caused by an aircraft in flight on a flight other than an international flight, compensation shall only be provided if that State Party has made

a declaration according to Article 2, paragraph 2. Compensation shall only be paid to the extent that the total amount of damages exceeds the limits according to Article 4.

2. The maximum amount of compensation available from the International Fund shall be 3 000 000 000 Special Drawing Rights for each event. Payments made according to paragraph 3 of this Article and distribution of amounts recovered according to Article 25 shall be in addition to the maximum amount for compensation.

3. If and to the extent that the Conference of Parties determines and for the period that it so determines that insurance in respect of the damage covered by this Convention is wholly or partially unavailable with respect to amounts of coverage or the risks covered, or is only available at a cost incompatible with the continued operation of air transport generally, the International Fund may, at its discretion, in respect of future events causing damage compensable under this Convention, pay the damages for which the operators are liable under Articles 3 and 4 and such payment shall discharge such liability of the operators. The Conference of Parties shall decide on a fee, the payment of which by the operators, for the period covered, shall be a condition for the International Fund taking the action specified in this paragraph.

Article 19. Advance payments and other measures

1. Subject to the decision of the Conference of Parties and in accordance with the Guidelines for Compensation, the International Fund may make advance payments without delay to natural persons who may be entitled to claim compensation under this Convention, in order to meet their immediate economic needs. Such advance payments shall not constitute recognition of a right to compensation and may be offset against any amount subsequently payable by the International Fund.

2. Subject to the decision of the Conference of Parties and in accordance with the Guidelines for Compensation, the International Fund may also take other measures to minimize or mitigate damage caused by an event.

CHAPTER V. SPECIAL PROVISIONS ON COMPENSATION AND RECOURSE

Article 20. Exoneration

If the operator or the International Fund proves that the damage was caused, or contributed to, by an act or omission of a claimant, or the person from whom he or she derives his or her rights, done with intent or recklessly and with knowledge that damage would probably result, the operator or the International Fund shall be wholly or partly exonerated from its liability to that claimant to the extent that such act or omission caused or contributed to the damage.

Article 21. Court costs and other expenses

1. The limits prescribed in Articles 4 and 18, paragraph 2, shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the claimant, including interest.

2. Paragraph 1 shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the operator has

offered in writing to the claimant within a period of six months from the date of the event causing the damage, or before the commencement of the action, whichever is the later.

Article 22. Priority of compensation

If the total amount of the damages to be paid exceeds the amounts available according to Articles 4 and 18, paragraph 2, the total amount shall be awarded preferentially to meet proportionately the claims in respect of death, bodily injury and mental injury, in the first instance. The remainder, if any, of the total amount payable shall be awarded proportionately among the claims in respect of other damage.

Article 23. Additional compensation

1. To the extent the total amount of damages exceeds the aggregate amount payable under Articles 4 and 18, paragraph 2, a person who has suffered damage may claim additional compensation from the operator.

2. The operator shall be liable for such additional compensation to the extent the person claiming compensation proves that the operator or its employees have contributed to the occurrence of the event by an act or omission done with intent to cause damage or recklessly and with knowledge that damage would probably result.

3. Where an employee has contributed to the damage, the operator shall not be liable for any additional compensation under this Article if it proves that an appropriate system for the selection and monitoring of its employees has been established and implemented.

4. An operator or, if it is a legal person, its senior management shall be presumed not to have been reckless if it proves that it has established and implemented a system to comply with the security requirements specified pursuant to Annex 17 to the Convention on International Civil Aviation (Chicago, 1944) in accordance with the law of the State Party in which the operator has its principal place of business, or if it has no such place of business, its permanent residence.

Article 24. Right of recourse of the operator

The operator shall have a right of recourse against:

- (a) any person who has committed, organized or financed the act of unlawful interference; and
- (b) any other person.

Article 25. Right of recourse of the International Fund

The International Fund shall have a right of recourse against:

- (a) any person who has committed, organized or financed the act of unlawful interference;
- (b) the operator subject to the conditions set out in Article 23; and
- (c) any other person.

Article 26. Restrictions on rights of recourse

1. The rights of recourse under Article 24, subparagraph (b), and Article 25, subparagraph (c), shall only arise to the extent that the person against whom recourse is sought could have been covered by insurance available on a commercially reasonable basis.

2. Paragraph 1 shall not apply if the person against whom recourse is sought under Article 25, subparagraph (c) has contributed to the occurrence of the event by an act or omission done recklessly and with knowledge that damage would probably result.

3. The International Fund shall not pursue any claim under Article 25, subparagraph (c) if the Conference of Parties determines that to do so would give rise to the application of Article 18, paragraph 3.

Article 27. Exoneration from recourse

No right of recourse shall lie against an owner, lessor, or financier retaining title of or holding security in an aircraft, not being an operator, or against a manufacturer if that manufacturer proves that it has complied with the mandatory requirements in respect of the design of the aircraft, its engines or components.

CHAPTER VI. ASSISTANCE IN CASE OF EVENTS IN STATES NON-PARTY

Article 28. Assistance in case of events in States non-Party

Where an operator, which has its principal place of business, or if it has no such place of business, its permanent residence, in a State Party, is liable for damage occurring in a State non-Party, the Conference of Parties may decide, on a case by case basis, that the International Fund shall provide financial support to that operator. Such support may only be provided:

(a) in respect of damage that would have fallen under the Convention if the State non-Party had been a State Party;

(b) if the State non-Party agrees in a form acceptable to the Conference of Parties to be bound by the provisions of this Convention in respect of the event giving rise to such damage;

(c) up to the maximum amount for compensation set out in Article 18, paragraph 2; and

(d) if the solvency of the operator liable is threatened even if support is given, where the Conference of Parties determines that the operator has sufficient arrangements protecting its solvency.

CHAPTER VII. EXERCISE OF REMEDIES AND RELATED PROVISIONS

Article 29. Exclusive remedy

1. Without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights, any action for compensation for damage to a third party due to an act of unlawful interference, however founded, whether under this Convention or in tort or in contract or otherwise, can only be brought against the operator and, if need be, against the International Fund and shall be subject to the conditions and

limits of liability set out in this Convention. No claims by a third party shall lie against any other person for compensation for such damage.

2. Paragraph 1 shall not apply to an action against a person who has committed, organized or financed an act of unlawful interference.

Article 30. Conversion of Special Drawing Rights

The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value in a national currency shall be calculated in accordance with the method of valuation applied by the International Monetary Fund for its operations and transactions. The value in a national currency, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State to express in the national currency of the State Party as far as possible the same real value as the amounts in Article 4.

Article 31. Review of limits

1. Subject to paragraph 2 of this Article, the sums prescribed in Articles 4 and 18, paragraph 2, shall be reviewed by the Director of the International Fund, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of this Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in Article 30.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Director shall inform the Conference of Parties of a revision of the limits of liability. Any such revision shall become effective six months after the meeting of the Conference of Parties, unless a majority of the States Parties register their disapproval. The Director shall immediately notify all States Parties of the coming into force of any revision.

Article 32. Forum

1. Subject to paragraph 2 of this Article, actions for compensation under the provisions of this Convention may be brought only before the courts of the State Party in whose territory the damage occurred.

2. Where damage occurs in more than one State Party, actions under the provisions of this Convention may be brought only before the courts of the State Party the territory of which the aircraft was in or about to leave when the event occurred.

3. Without prejudice to paragraphs 1 and 2 of this Article, application may be made in any State Party for such provisional measures, including protective measures, as may be available under the law of that State.

Article 33. Intervention by the International Fund

1. Each State Party shall ensure that the International Fund has the right to intervene in proceedings brought against the operator in its courts.

2. Except as provided in paragraph 3 of this Article, the International Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or in which it has not intervened.

3. If an action is brought against the operator in a State Party, each party to such proceedings shall be entitled to notify the International Fund of the proceedings. Where such notification has been made in accordance with the law of the court seised and in such time that the International Fund had time to intervene in the proceedings, the International Fund shall be bound by a judgement or decision in proceedings even if it has not intervened.

Article 34. Recognition and enforcement of judgements

1. Subject to the provisions of this Article, judgements entered by a competent court under Article 32 after trial, or by default, shall when they are enforceable in the State Party of that court be enforceable in any other State Party as soon as the formalities required by that State Party have been complied with.

2. The merits of the case shall not be reopened in any application for recognition or enforcement under this Article.

3. Recognition and enforcement of a judgement may be refused if:

(a) its recognition or enforcement would be manifestly contrary to public policy in the State Party where recognition or enforcement is sought;

(b) the defendant was not served with notice of the proceedings in such time and manner as to allow him or her to prepare and submit a defence;

(c) it is in respect of a cause of action which had already, as between the same parties, formed the subject of a judgement or an arbitral award which is recognized as final and conclusive under the law of the State Party where recognition or enforcement is sought;

(d) the judgement has been obtained by fraud of any of the parties; or

(e) the right to enforce the judgement is not vested in the person by whom the application is made.

4. Recognition and enforcement of a judgement may also be refused to the extent that the judgement awards damages, including exemplary or punitive damages, that do not compensate a third party for actual harm suffered.

5. Where a judgement is enforceable, payment of any court costs and other expenses incurred by the plaintiff, including interest recoverable under the judgement, shall also be enforceable.

Article 35. Regional and multilateral agreements on the recognition and enforcement of judgements

1. States Parties may enter into regional and multilateral agreements regarding the recognition and enforcement of judgements consistent with the objectives of this Conven-

tion, provided that such agreements do not result in a lower level of protection for any third party or defendant than that provided for in this Convention.

2. States Parties shall inform each other, through the Depositary, of any such regional or multilateral agreements that they have entered into before or after the date of entry into force of this Convention.

3. The provisions of this Chapter shall not affect the recognition or enforcement of any judgement pursuant to such agreements.

Article 36. Period of limitation

1. The right to compensation under Article 3 shall be extinguished if an action is not brought within two years from the date of the event which caused the damage.

2. The right to compensation under Article 18 shall be extinguished if an action is not brought, or a notification pursuant to Article 33, paragraph 3, is not made, within two years from the date of the event which caused the damage.

3. The method of calculating such two-year period shall be determined in accordance with the law of the court seized of the case.

Article 37. Death of person liable

In the event of the death of the person liable, an action for damages lies against those legally representing his or her estate and is subject to the provisions of this Convention.

CHAPTER VIII. FINAL CLAUSES

Article 38. Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Montréal on 2 May 2009 by States participating in the International Conference on Air Law held at Montréal from 20 April to 2 May 2009. After 2 May 2009, the Convention shall be open to all States for signature at the headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article 40.

2. This Convention shall be subject to ratification by States which have signed it.

3. Any State which does not sign this Convention may accept, approve or accede to it at any time.

4. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.

Article 39. Regional Economic Integration Organizations

1. A Regional Economic Integration Organization which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The Regional Economic Integration Organization shall in that case have the rights and obligations of a State Party, to the extent that the Organization has competence over matters governed by this Convention. Where the number of States Parties is relevant in this Convention, including in respect

of Article 10, the Regional Economic Integration Organization shall not count as a State Party in addition to its Member States which are States Parties.

2. The Regional Economic Integration Organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organization by its Member States. The Regional Economic Integration Organization shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “State Party” or “States Parties” in this Convention applies equally to a Regional Economic Integration Organization where the context so requires.

Article 40. Entry into force

1. This Convention shall enter into force on the one hundred and eightieth day after the deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession on condition, however, that the total number of passengers departing in the previous year from airports in the States that have ratified, accepted, approved or acceded is at least 750 000 000 as appears from the declarations made by ratifying, accepting, approving or acceding States. If, at the time of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession this condition has not been fulfilled, the Convention shall not come into force until the one hundred and eightieth day after this condition shall have been satisfied. An instrument deposited by a Regional Economic Integration Organization shall not be counted for the purpose of this paragraph.

2. This Convention shall come into force for each State ratifying, accepting, approving or acceding after the deposit of the last instrument of ratification, acceptance, approval or accession necessary for entry into force of this Convention on the ninetieth day after the deposit of its instrument of ratification, acceptance, approval or accession.

3. At the time of deposit of its instrument of ratification, acceptance, approval or accession a State shall declare the total number of passengers that departed on international commercial flights from airports in its territory in the previous year. The declaration at Article 2, paragraph 2, shall include the number of domestic passengers in the previous year and that number shall be counted for the purposes of determining the total number of passengers required under paragraph 1.

4. In making such declarations a State shall endeavour not to count a passenger that has already departed from an airport in a State Party on a journey including one or more stops or transfers. Such declarations may be amended from time to time to reflect passenger numbers in subsequent years. If a declaration is not amended, the number of passengers shall be presumed to be constant.

Article 41. Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one year following the date on which notification is received by the Depositary; in respect of damage contemplated in Article 3 arising from

events which occurred before the expiration of the one year period and the contributions required to cover such damage, the Convention shall continue to apply as if the denunciation had not been made.

Article 42. Termination

1. This Convention shall cease to be in force on the date when the number of States Parties falls below eight or on such earlier date as the Conference of Parties shall decide by a two-thirds majority of States that have not denounced the Convention.

2. States which are bound by this Convention on the day before the date it ceases to be in force shall enable the International Fund to exercise its functions as described under Article 43 of this Convention and shall, for that purpose only, remain bound by this Convention.

Article 43. Winding up of the International Fund

1. If this Convention ceases to be in force, the International Fund shall nevertheless:

(a) meet its obligations in respect of any event occurring before the Convention ceased to be in force and of any credits obtained pursuant to paragraph 4 of Article 17 while the Convention was still in force; and

(b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under subparagraph (a), including expenses for the administration of the International Fund necessary for this purpose.

2. The Conference of Parties shall take all appropriate measures to complete the winding up of the International Fund including the distribution in an equitable manner of any remaining assets for a purpose consonant with the aims of this Convention or for the benefit of those persons who have contributed to the International Fund.

3. For the purposes of this Article the International Fund shall remain a legal person.

Article 44. Relationship to other treaties

1. The rules of this Convention shall prevail over any rules in the following instruments which would otherwise be applicable to damage covered by this Convention:

(a) the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome on 7 October 1952; or

(b) the Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome on 7 October 1952, Signed at Montréal on 23 September 1978.

Article 45. States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.

3. For a declaration made under Article 2, paragraph 2, by a State Party having two or more territorial units in which different systems of law are applicable, it may declare that this Convention shall apply to damage to third parties that occurs in all its territorial units or in one or more of them and may modify this declaration by submitting another declaration at any time.

4. In relation to a State Party which has made a declaration under this Article:

(a) the reference in Article 6 to “the law of the State” shall be construed as referring to the law of the relevant territorial unit of that State; and

(b) references in Article 30 to “national currency” shall be construed as referring to the currency of the relevant territorial unit of that State.

Article 46. Reservations and declarations

1. No reservation may be made to this Convention but declarations authorized by Article 2, paragraph 2, Article 39, paragraph 2, Article 40, paragraph 3, and Article 45 may be made in accordance with these provisions.

2. Any declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

Article 47. Functions of the Depositary

The Depositary shall promptly notify all signatories and States Parties of:

(a) each new signature of this Convention and the date thereof;

(b) each deposit of an instrument of ratification, acceptance, approval or accession and the date thereof;

(c) the date of entry into force of this Convention;

(d) the date of the coming into force of any revision of the limits of liability established under this Convention;

(e) each declaration or modification thereto, together with the date thereof;

(f) the withdrawal of any declaration and the date thereof;

(g) any denunciation together with the date thereof and the date on which it takes effect; and

(h) the termination of the Convention.

In witness whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

Done at Montréal on the 2nd day of May of the year two thousand and nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof

shall be transmitted by the Depositary to all Contracting States to this Convention, as well as to all States Parties to the Convention and Protocol referred to in Article 44.

(b) CONVENTION ON COMPENSATION FOR DAMAGE CAUSED BY AIRCRAFT TO THIRD PARTIES. MONTRÉAL, 2 MAY 2009^{*}

The States Parties to this Convention,

Recognizing the need to ensure adequate compensation for third parties who suffer damage resulting from events involving an aircraft in flight;

Recognizing the need to modernize the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome on 7 October 1952, and the Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome on 7 October 1952, Signed at Montreal on 23 September 1978;

Recognizing the importance of ensuring protection of the interests of third-party victims and the need for equitable compensation, as well as the need to enable the continued stability of the aviation industry;

Reaffirming the desirability of the orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944; and

Convinced that collective State action for further harmonization and codification of certain rules governing the compensation of third parties who suffer damage resulting from events involving aircraft in flight through a new Convention is the most desirable and effective means of achieving an equitable balance of interests;

Have agreed as follows:

CHAPTER I. PRINCIPLES

Article 1. Definitions

For the purposes of this Convention:

(a) an “act of unlawful interference” means an act which is defined as an offence in the Convention for the Suppression of Unlawful Seizure of Aircraft, Signed at The Hague on 16 December 1970, or the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Signed at Montreal on 23 September 1971, and any amendment in force at the time of the event;

(b) an “event” occurs when damage is caused by an aircraft in flight other than as a result of an act of unlawful interference;

(c) an aircraft is considered to be “in flight” at any time from the moment when all its external doors are closed following embarkation or loading until the moment when any such door is opened for disembarkation or unloading;

^{*} Adopted at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization in Montréal from 20 April to 2 May 2009

(d) “international flight” means any flight whose place of departure and whose intended destination are situated within the territories of two States, whether or not there is a break in the flight, or within the territory of one State if there is an intended stopping place in the territory of another State;

(e) “maximum mass” means the maximum certificated take-off mass of the aircraft, excluding the effect of lifting gas when used;

(f) “operator” means the person who makes use of the aircraft, provided that if control of the navigation of the aircraft is retained by the person from whom the right to make use of the aircraft is derived, whether directly or indirectly, that person shall be considered the operator. A person shall be considered to be making use of an aircraft when he or she is using it personally or when his or her servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority;

(g) “person” means any natural or legal person, including a State;

(h) “State Party” means a State for which this Convention is in force; and

(i) “third party” means a person other than the operator, passenger or consignor or consignee of cargo.

Article 2. Scope

1. This Convention applies to damage to third parties which occurs in the territory of a State Party caused by an aircraft in flight on an international flight, other than as a result of an act of unlawful interference.

2. If a State Party so declares to the Depository, this Convention shall also apply where an aircraft in flight other than on an international flight causes damage in the territory of that State, other than as a result of an act of unlawful interference.

3. For the purposes of this Convention:

(a) damage to a ship in or an aircraft above the High Seas or the Exclusive Economic Zone shall be regarded as damage occurring in the territory of the State in which it is registered; however, if the operator of the aircraft has its principal place of business in the territory of a State other than the State of Registry, the damage to the aircraft shall be regarded as having occurred in the territory of the State in which it has its principal place of business; and

(b) damage to a drilling platform or other installation permanently fixed to the soil in the Exclusive Economic Zone or the Continental Shelf shall be regarded as having occurred in the territory of the State which has jurisdiction over such platform or installation in accordance with international law including the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

4. This Convention shall not apply to damage caused by State aircraft. Aircraft used in military, customs and police services shall be deemed to be State aircraft.

CHAPTER II. LIABILITY OF THE OPERATOR AND RELATED ISSUES

Article 3. Liability of the operator

1. The operator shall be liable for damage sustained by third parties upon condition only that the damage was caused by an aircraft in flight.

2. There shall be no right to compensation under this Convention if the damage is not a direct consequence of the event giving rise thereto, or if the damage results from the mere fact of passage of the aircraft through the airspace in conformity with existing air traffic regulations.

3. Damages due to death, bodily injury and mental injury shall be compensable. Damages due to mental injury shall be compensable only if caused by a recognizable psychiatric illness resulting either from bodily injury or from direct exposure to the likelihood of imminent death or bodily injury.

4. Damage to property shall be compensable.

5. Environmental damage shall be compensable, in so far as such compensation is provided for under the law of the State Party in the territory of which the damage occurred.

6. No liability shall arise under this Convention for damage caused by a nuclear incident as defined in the Paris Convention on Third Party Liability in the Field of Nuclear Energy (29 July 1960) or for nuclear damage as defined in the Vienna Convention on Civil Liability for Nuclear Damage (21 May 1963), and any amendment or supplements to these Conventions in force at the time of the event.

7. Punitive, exemplary or any other non-compensatory damages shall not be recoverable.

8. An operator who would otherwise be liable under the provisions of this Convention shall not be liable if the damage is the direct consequence of armed conflict or civil disturbance.

Article 4. Limit of the operator's liability

1. The liability of the operator arising under Article 3 shall not exceed for an event the following limit based on the mass of the aircraft involved:

(a) 750 000 Special Drawing Rights for aircraft having a maximum mass of 500 kilogrammes or less;

(b) 1 500 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 kilogrammes but not exceeding 1 000 kilogrammes;

(c) 3 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 1 000 kilogrammes but not exceeding 2 700 kilogrammes;

(d) 7 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 2 700 kilogrammes but not exceeding 6 000 kilogrammes;

(e) 18 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 6 000 kilogrammes but not exceeding 12 000 kilogrammes;

(f) 80 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 12 000 kilogrammes but not exceeding 25 000 kilogrammes;

(g) 150 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 25 000 kilogrammes but not exceeding 50 000 kilogrammes;

(h) 300 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 50 000 kilogrammes but not exceeding 200 000 kilogrammes;

(i) 500 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 200 000 kilogrammes but not exceeding 500 000 kilogrammes;

(j) 700 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 000 kilogrammes.

2. If an event involves two or more aircraft operated by the same operator, the limit of liability in respect of the aircraft with the highest maximum mass shall apply.

3. The limits in this Article shall only apply if the operator proves that the damage:

(a) was not due to its negligence or other wrongful act or omission or that of its servants or agents; or

(b) was solely due to the negligence or other wrongful act or omission of another person.

Article 5. Priority of compensation

If the total amount of the damages to be paid exceeds the amounts available according to Article 4, paragraph 1, the total amount shall be awarded preferentially to meet proportionately the claims in respect of death, bodily injury and mental injury, in the first instance. The remainder, if any, of the total amount payable shall be awarded proportionately among the claims in respect of other damage.

Article 6. Events involving two or more operators

1. Where two or more aircraft have been involved in an event causing damage to which this Convention applies, the operators of those aircraft are jointly and severally liable for any damage suffered by a third party.

2. If two or more operators are so liable, the recourse between them shall depend on their respective limits of liability and their contribution to the damage.

3. No operator shall be liable for a sum in excess of the limit, if any, applicable to its liability.

Article 7. Court costs and other expenses

1. The court may award, in accordance with its own law, the whole or part of the court costs and of the other expenses of the litigation incurred by the claimant, including interest.

2. Paragraph 1 shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the operator has offered in writing to the claimant within a period of six months from the date of the event causing the damage, or before the commencement of the action, whichever is the later.

Article 8. Advance payments

If required by the law of the State where the damage occurred, the operator shall make advance payments without delay to natural persons who may be entitled to claim compensation under this Convention, in order to meet their immediate economic needs. Such advance payments shall not constitute a recognition of liability and may be offset against any amount subsequently payable as damages by the operator.

Article 9. Insurance

1. Having regard to Article 4, States Parties shall require their operators to maintain adequate insurance or guarantee covering their liability under this Convention.

2. An operator may be required by the State Party in or into which it operates to furnish evidence that it maintains adequate insurance or guarantee. In doing so, the State Party shall apply the same criteria to operators of other States Parties as it applies to its own operators.

CHAPTER III. EXONERATION AND RECOURSE

Article 10. Exoneration

If the operator proves that the damage was caused, or contributed to, by the negligence or other wrongful act or omission of a claimant, or the person from whom he or she derives his or her rights, the operator shall be wholly or partly exonerated from its liability to that claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

Article 11. Right of recourse

Subject to Article 13, nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any person.

CHAPTER IV. EXERCISE OF REMEDIES AND RELATED PROVISIONS

Article 12. Exclusive remedy

1. Any action for compensation for damage to third parties caused by an aircraft in flight brought against the operator, or its servants or agents, however founded, whether under this Convention or in tort or otherwise, can only be brought subject to the conditions set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.

2. Article 3, paragraphs 6, 7 and 8, shall apply to any other person from whom the damages specified in those paragraphs would otherwise be recoverable or compensable, whether under this Convention or in tort or otherwise.

Article 13. Exclusion of liability

Neither the owner, lessor or financier retaining title or holding security of an aircraft, not being an operator, nor their servants or agents, shall be liable for damages under this Convention or the law of any State Party relating to third party damage.

Article 14. Conversion of Special Drawing Rights

The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value in a national currency shall be calculated in accordance with the method of valuation applied by the International Monetary Fund for its operations and transactions. The value in a national currency, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State to express in the national currency of the State Party as far as possible the same real value as the amounts in Article 4, paragraph 1.

Article 15. Review of limits

1. Subject to paragraph 2 of this Article, the sums prescribed in Article 4, paragraph 1, shall be reviewed by the Depositary by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of this Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in Article 14.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify the States Parties of a revision of the limits of liability. Any such revision shall become effective six months after the notification to the States Parties, unless a majority of the States Parties register their disapproval. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

Article 16. Forum

1. Subject to paragraph 2 of this Article, actions for compensation under the provisions of this Convention may be brought only before the courts of the State Party in whose territory the damage occurred.

2. Where damage occurs in more than one State Party, actions under the provisions of this Convention may be brought only before the courts of the State Party the territory of which the aircraft was in or about to leave when the event occurred.

3. Without prejudice to paragraphs 1 and 2 of this Article, application may be made in any State Party for such provisional measures, including protective measures, as may be available under the law of that State.

Article 17. Recognition and enforcement of judgements

1. Subject to the provisions of this Article, judgements entered by a competent court under Article 16 after trial, or by default, shall when they are enforceable in the State Party of that court be enforceable in any other State Party as soon as the formalities required by that State Party have been complied with.

2. The merits of the case shall not be reopened in any application for recognition or enforcement under this Article.

3. Recognition and enforcement of a judgement may be refused if:

(a) its recognition or enforcement would be manifestly contrary to public policy in the State Party where recognition or enforcement is sought;

(b) the defendant was not served with notice of the proceedings in such time and manner as to allow him or her to prepare and submit a defence;

(c) it is in respect of a cause of action which had already, as between the same parties, formed the subject of a judgement or an arbitral award which is recognized as final and conclusive under the law of the State Party where recognition or enforcement is sought;

(d) the judgement has been obtained by fraud of any of the parties; or

(e) the right to enforce the judgement is not vested in the person by whom the application is made.

4. Recognition and enforcement of a judgement may also be refused to the extent that the judgement awards damages, including exemplary or punitive damages, that do not compensate a third party for actual harm suffered.

5. Where a judgement is enforceable, payment of any court costs and other expenses incurred by the plaintiff, including interest recoverable under the judgement, shall also be enforceable.

Article 18. Regional and multilateral agreements on the recognition and enforcement of judgements

1. States Parties may enter into regional and multilateral agreements regarding the recognition and enforcement of judgements consistent with the objectives of this Convention, provided that such agreements do not result in a lower level of protection for any third party or defendant than that provided for in this Convention.

2. States Parties shall inform each other, through the Depositary, of any such regional or multilateral agreements that they have entered into before or after the date of entry into force of this Convention.

3. The provisions of this Chapter shall not affect the recognition or enforcement of any judgement pursuant to such agreements.

Article 19. Period of limitation

1. The right to compensation under Article 3 shall be extinguished if an action is not brought within two years from the date of the event which caused the damage.

2. The method of calculating such two-year period shall be determined in accordance with the law of the court seised of the case.

Article 20. Death of person liable

In the event of the death of the person liable, an action for damages lies against those legally representing his or her estate and is subject to the provisions of this Convention.

CHAPTER V. FINAL CLAUSES

Article 21. Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Montréal on 2 May 2009 by States participating in the International Conference on Air Law held at Montréal from 20 April to 2 May 2009. After 2 May 2009, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article 23.

2. This Convention shall be subject to ratification by States which have signed it.

3. Any State which does not sign this Convention may accept, approve or accede to it at any time.

4. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.

Article 22. Regional Economic Integration Organizations

1. A Regional Economic Integration Organization which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The Regional Economic Integration Organization shall in that case have the rights and obligations of a State Party to the extent that that Organization has competence over matters governed by this Convention.

2. The Regional Economic Integration Organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organization by its Member States. The Regional Economic Integration Organization shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a "State Party" or "States Parties" in this Convention applies equally to a Regional Economic Integration Organization where the context so requires.

Article 23. Entry into force

1. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instruments. An instrument deposited by a Regional Economic Integration Organization shall not be counted for the purpose of this paragraph.

2. For other States and for other Regional Economic Integration Organizations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

Article 24. Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary; in respect of damage contemplated in Article 3 arising from an event which occurred before the expiration of the one hundred and eighty day period, the Convention shall continue to apply as if the denunciation had not been made.

Article 25. Relationship to other treaties

The rules of this Convention shall prevail over any rules in the following instruments which would otherwise be applicable to damage covered by this Convention:

(a) the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome on 7 October 1952; or

(b) the Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome on 7 October 1952, Signed at Montréal on 23 September 1978.

Article 26. States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which this Convention applies.

3. For a declaration made under Article 2, paragraph 2, by a State Party having two or more territorial units in which different systems of law are applicable, it may declare that this Convention shall apply to damage to third parties that occurs in all its territorial units or in one or more of them and may modify this declaration by submitting another declaration at any time.

4. In relation to a State Party which has made a declaration under this Article:

(a) the reference in Article 8 to “the law of the State” shall be construed as referring to the law of the relevant territorial unit of that State; and

(b) references in Article 14 to “national currency” shall be construed as referring to the currency of the relevant territorial unit of that State.

Article 27. Reservations and declarations

1. No reservation may be made to this Convention but declarations authorized by Article 2, paragraph 2, Article 22, paragraph 2, and Article 26 may be made in accordance with these provisions.

2. Any declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

Article 28. Functions of the Depositary

The Depositary shall promptly notify all signatories and States Parties of:

- (a) each new signature of this Convention and the date thereof;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession and the date thereof;
- (c) each declaration and the date thereof;
- (d) the modification or withdrawal of any declaration and the date thereof;
- (e) the date of entry into force of this Convention;
- (f) the date of the coming into force of any revision of the limits of liability established under this Convention; and
- (g) any denunciation with the date thereof and the date on which it takes effect.

In witness whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

Done at Montréal on the 2nd day of May of the year two thousand and nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Convention, as well as to all States Parties to the Conventions and Protocol referred to in Article 25.

2. Food and Agriculture Organization

AGREEMENT ON PORT STATE MEASURES TO PREVENT, DETER, AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING. ROME, 22 NOVEMBER 2009*

Preamble

The Parties to this Agreement,

Deeply concerned about the continuation of illegal, unreported and unregulated fishing and its detrimental effect upon fish stocks, marine ecosystems and the livelihoods of legitimate fishers, and the increasing need for food security on a global basis,

Conscious of the role of the port State in the adoption of effective measures to promote the sustainable use and the long-term conservation of living marine resources,

Recognizing that measures to combat illegal, unreported and unregulated fishing should build on the primary responsibility of flag States and use all available jurisdiction in

* Adopted at the Food and Agriculture Organization Conference at its 36th Session on 22 November 2009

accordance with international law, including port State measures, coastal State measures, market related measures and measures to ensure that nationals do not support or engage in illegal, unreported and unregulated fishing,

Recognizing that port State measures provide a powerful and cost-effective means of preventing, deterring and eliminating illegal, unreported and unregulated fishing,

Aware of the need for increasing coordination at the regional and interregional levels to combat illegal, unreported and unregulated fishing through port State measures,

Acknowledging the rapidly developing communications technology, databases, networks and global records that support port State measures,

Recognizing the need for assistance to developing countries to adopt and implement port State measures,

Taking note of the calls by the international community through the United Nations System, including the United Nations General Assembly and the Committee on Fisheries of the Food and Agriculture Organization of the United Nations, hereinafter referred to as 'FAO,' for a binding international instrument on minimum standards for port State measures, based on the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing,

Bearing in mind that, in the exercise of their sovereignty over ports located in their territory, States may adopt more stringent measures, in accordance with international law,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, hereinafter referred to as the 'Convention,'

Recalling the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 and the 1995 FAO Code of Conduct for Responsible Fisheries,

Recognizing the need to conclude an international agreement within the framework of FAO, under Article XIV of the FAO Constitution,

Have agreed as follows:

PART 1. GENERAL PROVISIONS

Article 1. Use of terms

For the purposes of this Agreement:

(a) "conservation and management measures" means measures to conserve and manage living marine resources that are adopted and applied consistently with the relevant rules of international law including those reflected in the Convention;

(b) "fish" means all species of living marine resources, whether processed or not;

(c) “fishing” means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;

(d) “fishing related activities” means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;

(e) “illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, hereinafter referred to as ‘IUU fishing’;

(f) “Party” means a State or regional economic integration organization that has consented to be bound by this Agreement and for which this Agreement is in force;

(g) “port” includes offshore terminals and other installations for landing, transshipping, packaging, processing, refuelling or resupplying;

(h) “regional economic integration organization” means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;

(i) “regional fisheries management organization” means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures; and

(j) “vessel” means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.

Article 2. Objective

The objective of this Agreement is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures, and thereby to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems.

Article 3. Application

1. Each Party shall, in its capacity as a port State, apply this Agreement in respect of vessels not entitled to fly its flag that are seeking entry to its ports or are in one of its ports, except for:

(a) vessels of a neighbouring State that are engaged in artisanal fishing for subsistence, provided that the port State and the flag State cooperate to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing; and

(b) container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing.

2. A Party may, in its capacity as a port State, decide not to apply this Agreement to vessels chartered by its nationals exclusively for fishing in areas under its national jurisdiction and operating under its authority therein. Such vessels shall be subject to measures

by the Party which are as effective as measures applied in relation to vessels entitled to fly its flag.

3. This Agreement shall apply to fishing conducted in marine areas that is illegal, unreported or unregulated, as defined in Article 1(e) of this Agreement, and to fishing related activities in support of such fishing.

4. This Agreement shall be applied in a fair, transparent and non-discriminatory manner, consistent with international law.

5. As this Agreement is global in scope and applies to all ports, the Parties shall encourage all other entities to apply measures consistent with its provisions. Those that may not otherwise become Parties to this Agreement may express their commitment to act consistently with its provisions.

Article 4. Relationship with international law and other international instruments

1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of Parties under international law. In particular, nothing in this Agreement shall be construed to affect:

(a) the sovereignty of Parties over their internal, archipelagic and territorial waters or their sovereign rights over their continental shelf and in their exclusive economic zones;

(b) the exercise by Parties of their sovereignty over ports in their territory in accordance with international law, including their right to deny entry thereto as well as to adopt more stringent port State measures than those provided for in this Agreement, including such measures adopted pursuant to a decision of a regional fisheries management organization.

2. In applying this Agreement, a Party does not thereby become bound by measures or decisions of, or recognize, any regional fisheries management organization of which it is not a member.

3. In no case is a Party obliged under this Agreement to give effect to measures or decisions of a regional fisheries management organization if those measures or decisions have not been adopted in conformity with international law.

4. This Agreement shall be interpreted and applied in conformity with international law taking into account applicable international rules and standards, including those established through the International Maritime Organization, as well as other international instruments.

5. Parties shall fulfil in good faith the obligations assumed pursuant to this Agreement and shall exercise the rights recognized herein in a manner that would not constitute an abuse of right.

Article 5. Integration and coordination at the national level

Each Party shall, to the greatest extent possible:

(a) integrate or coordinate fisheries related port State measures with the broader system of port State controls;

(b) integrate port State measures with other measures to prevent, deter and eliminate IUU fishing and fishing related activities in support of such fishing, taking into account

as appropriate the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; and

(c) take measures to exchange information among relevant national agencies and to coordinate the activities of such agencies in the implementation of this Agreement.

Article 6. Cooperation and exchange of information

1. In order to promote the effective implementation of this Agreement and with due regard to appropriate confidentiality requirements, Parties shall cooperate and exchange information with relevant States, FAO, other international organizations and regional fisheries management organizations, including on the measures adopted by such regional fisheries management organizations in relation to the objective of this Agreement.

2. Each Party shall, to the greatest extent possible, take measures in support of conservation and management measures adopted by other States and other relevant international organizations.

3. Parties shall cooperate, at the subregional, regional and global levels, in the effective implementation of this Agreement including, where appropriate, through FAO or regional fisheries management organizations and arrangements.

PART 2. ENTRY INTO PORT

Article 7. Designation of ports

1. Each Party shall designate and publicize the ports to which vessels may request entry pursuant to this Agreement. Each Party shall provide a list of its designated ports to FAO, which shall give it due publicity.

2. Each Party shall, to the greatest extent possible, ensure that every port designated and publicized in accordance with paragraph 1 of this Article has sufficient capacity to conduct inspections pursuant to this Agreement.

Article 8. Advance request for port entry

1. Each Party shall require, as a minimum standard, the information requested in Annex A to be provided before granting entry to a vessel to its port.

2. Each Party shall require the information referred to in paragraph 1 of this Article to be provided sufficiently in advance to allow adequate time for the port State to examine such information.

Article 9. Port entry, authorization or denial

1. After receiving the relevant information required pursuant to Article 8, as well as such other information as it may require to determine whether the vessel requesting entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, each Party shall decide whether to authorize or deny the entry of the vessel into its port and shall communicate this decision to the vessel or to its representative.

2. In the case of authorization of entry, the master of the vessel or the vessel's representative shall be required to present the authorization for entry to the competent authorities of the Party upon the vessel's arrival at port.

3. In the case of denial of entry, each Party shall communicate its decision taken pursuant to paragraph 1 of this Article to the flag State of the vessel and, as appropriate and to the extent possible, relevant coastal States, regional fisheries management organizations and other international organizations.

4. Without prejudice to paragraph 1 of this Article, when a Party has sufficient proof that a vessel seeking entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, in particular the inclusion of a vessel on a list of vessels having engaged in such fishing or fishing related activities adopted by a relevant regional fisheries management organization in accordance with the rules and procedures of such organization and in conformity with international law, the Party shall deny that vessel entry into its ports, taking into due account paragraphs 2 and 3 of Article 4.

5. Notwithstanding paragraphs 3 and 4 of this Article, a Party may allow entry into its ports of a vessel referred to in those paragraphs exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating IUU fishing and fishing related activities in support of such fishing.

6. Where a vessel referred to in paragraph 4 or 5 of this Article is in port for any reason, a Party shall deny such vessel the use of its ports for landing, transshipping, packaging, and processing of fish and for other port services including, *inter alia*, refuelling and resupplying, maintenance and drydocking. Paragraphs 2 and 3 of Article 11 apply *mutatis mutandis* in such cases. Denial of such use of ports shall be in conformity with international law.

Article 10. Force majeure or distress

Nothing in this Agreement affects the entry of vessels to port in accordance with international law for reasons of *force majeure* or distress, or prevents a port State from permitting entry into port to a vessel exclusively for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

PART 3. USE OF PORTS

Article 11. Use of ports

1. Where a vessel has entered one of its ports, a Party shall deny, pursuant to its laws and regulations and consistent with international law, including this Agreement, that vessel the use of the port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, *inter alia*, refuelling and resupplying, maintenance and drydocking, if:

(a) the Party finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by its flag State;

(b) the Party finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by a coastal State in respect of areas under the national jurisdiction of that State;

(c) the Party receives clear evidence that the fish on board was taken in contravention of applicable requirements of a coastal State in respect of areas under the national jurisdiction of that State;

(d) the flag State does not confirm within a reasonable period of time, on the request of the port State, that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization taking into due account paragraphs 2 and 3 of Article 4; or

(e) the Party has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of such fishing, including in support of a vessel referred to in paragraph 4 of Article 9, unless the vessel can establish:

- (i) that it was acting in a manner consistent with relevant conservation and management measures; or
- (ii) in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not, at the time of provisioning, a vessel referred to in paragraph 4 of Article 9.

2. Notwithstanding paragraph 1 of this Article, a Party shall not deny a vessel referred to in that paragraph the use of port services:

(a) essential to the safety or health of the crew or the safety of the vessel, provided these needs are duly proven, or

(b) where appropriate, for the scrapping of the vessel.

3. Where a Party has denied the use of its port in accordance with this Article, it shall promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other relevant international organizations of its decision.

4. A Party shall withdraw its denial of the use of its port pursuant to paragraph 1 of this Article in respect of a vessel only if there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply.

5. Where a Party has withdrawn its denial pursuant to paragraph 4 of this Article, it shall promptly notify those to whom a notification was issued pursuant to paragraph 3 of this Article.

PART 4. INSPECTIONS AND FOLLOW-UP ACTIONS

Article 12. Levels and priorities for inspection

1. Each Party shall inspect the number of vessels in its ports required to reach an annual level of inspections sufficient to achieve the objective of this Agreement.

2. Parties shall seek to agree on the minimum levels for inspection of vessels through, as appropriate, regional fisheries management organizations, FAO or otherwise.

3. In determining which vessels to inspect, a Party shall give priority to:

(a) vessels that have been denied entry or use of a port in accordance with this Agreement;

(b) requests from other relevant Parties, States or regional fisheries management organizations that particular vessels be inspected, particularly where such requests are supported by evidence of IUU fishing or fishing related activities in support of such fishing by the vessel in question; and

(c) other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing or fishing related activities in support of such fishing.

Article 13. Conduct of inspections

1. Each Party shall ensure that its inspectors carry out the functions set forth in Annex B as a minimum standard.

2. Each Party shall, in carrying out inspections in its ports:

(a) ensure that inspections are carried out by properly qualified inspectors authorized for that purpose, having regard in particular to Article 17;

(b) ensure that, prior to an inspection, inspectors are required to present to the master of the vessel an appropriate document identifying the inspectors as such;

(c) ensure that inspectors examine all relevant areas of the vessel, the fish on board, the nets and any other gear, equipment, and any document or record on board that is relevant to verifying compliance with relevant conservation and management measures;

(d) require the master of the vessel to give inspectors all necessary assistance and information, and to present relevant material and documents as may be required, or certified copies thereof;

(e) in case of appropriate arrangements with the flag State of the vessel, invite that State to participate in the inspection;

(f) make all possible efforts to avoid unduly delaying the vessel to minimize interference and inconvenience, including any unnecessary presence of inspectors on board, and to avoid action that would adversely affect the quality of the fish on board;

(g) make all possible efforts to facilitate communication with the master or senior crew members of the vessel, including where possible and where needed that the inspector is accompanied by an interpreter;

(h) ensure that inspections are conducted in a fair, transparent and non-discriminatory manner and would not constitute harassment of any vessel; and

(i) not interfere with the master's ability, in conformity with international law, to communicate with the authorities of the flag State.

Article 14. Results of inspections

Each Party shall, as a minimum standard, include the information set out in Annex C in the written report of the results of each inspection.

Article 15. Transmittal of inspection results

Each Party shall transmit the results of each inspection to the flag State of the inspected vessel and, as appropriate, to:

(a) relevant Parties and States, including:

(i) those States for which there is evidence through inspection that the vessel has engaged in IUU fishing or fishing related activities in support of such fishing within waters under their national jurisdiction; and

(ii) the State of which the vessel's master is a national;

- (b) relevant regional fisheries management organizations; and
- (c) FAO and other relevant international organizations.

Article 16. Electronic exchange of information

1. To facilitate implementation of this Agreement, each Party shall, where possible, establish a communication mechanism that allows for direct electronic exchange of information, with due regard to appropriate confidentiality requirements.

2. To the extent possible and with due regard to appropriate confidentiality requirements, Parties should cooperate to establish an information-sharing mechanism, preferably coordinated by FAO, in conjunction with other relevant multilateral and intergovernmental initiatives, and to facilitate the exchange of information with existing databases relevant to this Agreement.

3. Each Party shall designate an authority that shall act as a contact point for the exchange of information under this Agreement. Each Party shall notify the pertinent designation to FAO.

4. Each Party shall handle information to be transmitted through any mechanism established under paragraph 1 of this Article consistent with Annex D.

5. FAO shall request relevant regional fisheries management organizations to provide information concerning the measures or decisions they have adopted and implemented which relate to this Agreement for their integration, to the extent possible and taking due account of the appropriate confidentiality requirements, into the information-sharing mechanism referred to in paragraph 2 of this Article.

Article 17. Training of inspectors

Each Party shall ensure that its inspectors are properly trained taking into account the guidelines for the training of inspectors in Annex E. Parties shall seek to cooperate in this regard.

Article 18. Port State actions following inspection

1. Where, following an inspection, there are clear grounds for believing that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing, the inspecting Party shall:

(a) promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other international organizations, and the State of which the vessel's master is a national of its findings; and

(b) deny the vessel the use of its port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, *inter alia*, refuelling and resupplying, maintenance and drydocking, if these actions have not already been taken in respect of the vessel, in a manner consistent with this Agreement, including Article 4.

2. Notwithstanding paragraph 1 of this Article, a Party shall not deny a vessel referred to in that paragraph the use of port services essential for the safety or health of the crew or the safety of the vessel.

3. Nothing in this Agreement prevents a Party from taking measures that are in conformity with international law in addition to those specified in paragraphs 1 and 2 of this Article, including such measures as the flag State of the vessel has expressly requested or to which it has consented.

Article 19. Information on recourse in the port State

1. A Party shall maintain the relevant information available to the public and provide such information, upon written request, to the owner, operator, master or representative of a vessel with regard to any recourse established in accordance with its national laws and regulations concerning port State measures taken by that Party pursuant to Articles 9, 11, 13 or 18, including information pertaining to the public services or judicial institutions available for this purpose, as well as information on whether there is any right to seek compensation in accordance with its national laws and regulations in the event of any loss or damage suffered as a consequence of any alleged unlawful action by the Party.

2. The Party shall inform the flag State, the owner, operator, master or representative, as appropriate, of the outcome of any such recourse. Where other Parties, States or international organizations have been informed of the prior decision pursuant to Articles 9, 11, 13 or 18, the Party shall inform them of any change in its decision.

PART 5. ROLE OF FLAG STATES

Article 20. Role of flag States

1. Each Party shall require the vessels entitled to fly its flag to cooperate with the port State in inspections carried out pursuant to this Agreement.

2. When a Party has clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing and is seeking entry to or is in the port of another State, it shall, as appropriate, request that State to inspect the vessel or to take other measures consistent with this Agreement.

3. Each Party shall encourage vessels entitled to fly its flag to land, transship, package and process fish, and use other port services, in ports of States that are acting in accordance with, or in a manner consistent with this Agreement. Parties are encouraged to develop, including through regional fisheries management organizations and FAO, fair, transparent and non-discriminatory procedures for identifying any State that may not be acting in accordance with, or in a manner consistent with, this Agreement.

4. Where, following port State inspection, a flag State Party receives an inspection report indicating that there are clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing, it shall immediately and fully investigate the matter and shall, upon sufficient evidence, take enforcement action without delay in accordance with its laws and regulations.

5. Each Party shall, in its capacity as a flag State, report to other Parties, relevant port States and, as appropriate, other relevant States, regional fisheries management organizations and FAO on actions it has taken in respect of vessels entitled to fly its flag that, as a result of port State measures taken pursuant to this Agreement, have been determined to have engaged in IUU fishing or fishing related activities in support of such fishing.

6. Each Party shall ensure that measures applied to vessels entitled to fly its flag are at least as effective in preventing, deterring, and eliminating IUU fishing and fishing related activities in support of such fishing as measures applied to vessels referred to in paragraph 1 of Article 3.

PART 6. REQUIREMENTS OF DEVELOPING STATES

Article 21. Requirements of developing States

1. Parties shall give full recognition to the special requirements of developing States Parties in relation to the implementation of port State measures consistent with this Agreement. To this end, Parties shall, either directly or through FAO, other specialized agencies of the United Nations or other appropriate international organizations and bodies, including regional fisheries management organizations, provide assistance to developing States Parties in order to, *inter alia*:

(a) enhance their ability, in particular the least-developed among them and small island developing States, to develop a legal basis and capacity for the implementation of effective port State measures;

(b) facilitate their participation in any international organizations that promote the effective development and implementation of port State measures; and

(c) facilitate technical assistance to strengthen the development and implementation of port State measures by them, in coordination with relevant international mechanisms.

2. Parties shall give due regard to the special requirements of developing port States Parties, in particular the least-developed among them and small island developing States, to ensure that a disproportionate burden resulting from the implementation of this Agreement is not transferred directly or indirectly to them. In cases where the transfer of a disproportionate burden has been demonstrated, Parties shall cooperate to facilitate the implementation by the relevant developing States Parties of specific obligations under this Agreement.

3. Parties shall, either directly or through FAO, assess the special requirements of developing States Parties concerning the implementation of this Agreement.

4. Parties shall cooperate to establish appropriate funding mechanisms to assist developing States in the implementation of this Agreement. These mechanisms shall, *inter alia*, be directed specifically towards:

(a) developing national and international port State measures;

(b) developing and enhancing capacity, including for monitoring, control and surveillance and for training at the national and regional levels of port managers, inspectors, and enforcement and legal personnel;

(c) monitoring, control, surveillance and compliance activities relevant to port State measures, including access to technology and equipment; and

(d) assisting developing States Parties with the costs involved in any proceedings for the settlement of disputes that result from actions they have taken pursuant to this Agreement.

5. Cooperation with and among developing States Parties for the purposes set out in this Article may include the provision of technical and financial assistance through bilateral, multilateral and regional channels, including South-South cooperation.

6. Parties shall establish an *ad hoc* working group to periodically report and make recommendations to the Parties on the establishment of funding mechanisms including a scheme for contributions, identification and mobilization of funds, the development of criteria and procedures to guide implementation, and progress in the implementation of the funding mechanisms. In addition to the considerations provided in this Article, the *ad hoc* working group shall take into account, *inter alia*:

(a) the assessment of the needs of developing States Parties, in particular the least-developed among them and small island developing States;

(b) the availability and timely disbursement of funds;

(c) transparency of decision-making and management processes concerning fund-raising and allocations; and

(d) accountability of the recipient developing States Parties in the agreed use of funds.

Parties shall take into account the reports and any recommendations of the *ad hoc* working group and take appropriate action.

PART 7. DISPUTE SETTLEMENT

Article 22. Peaceful settlement of disputes

1. Any Party may seek consultations with any other Party or Parties on any dispute with regard to the interpretation or application of the provisions of this Agreement with a view to reaching a mutually satisfactory solution as soon as possible.

2. In the event that the dispute is not resolved through these consultations within a reasonable period of time, the Parties in question shall consult among themselves as soon as possible with a view to having the dispute settled by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

3. Any dispute of this character not so resolved shall, with the consent of all Parties to the dispute, be referred for settlement to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration. In the case of failure to reach agreement on referral to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration, the Parties shall continue to consult and cooperate with a view to reaching settlement of the dispute in accordance with the rules of international law relating to the conservation of living marine resources.

PART 8. NON-PARTIES

Article 23. Non-Parties to this Agreement

1. Parties shall encourage non-Parties to this Agreement to become Parties thereto and/or to adopt laws and regulations and implement measures consistent with its provisions.

2. Parties shall take fair, non-discriminatory and transparent measures consistent with this Agreement and other applicable international law to deter the activities of non-Parties which undermine the effective implementation of this Agreement.

PART 9. MONITORING, REVIEW AND ASSESSMENT

Article 24. Monitoring, review and assessment

1. Parties shall, within the framework of FAO and its relevant bodies, ensure the regular and systematic monitoring and review of the implementation of this Agreement as well as the assessment of progress made towards achieving its objective.

2. Four years after the entry into force of this Agreement, FAO shall convene a meeting of the Parties to review and assess the effectiveness of this Agreement in achieving its objective. The Parties shall decide on further such meetings as necessary.

PART 10. FINAL PROVISIONS

Article 25. Signature

This Agreement shall be open for signature at FAO from the Twenty-second day of November 2009 until the Twenty-first day of November 2010 by all States and regional economic integration organizations.

Article 26. Ratification, acceptance or approval

1. This Agreement shall be subject to ratification, acceptance or approval by the signatories.

2. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

Article 27. Accession

1. After the period in which this Agreement is open for signature, it shall be open for accession by any State or regional economic integration organization.

2. Instruments of accession shall be deposited with the Depositary.

Article 28. Participation by regional economic integration organizations

1. In cases where a regional economic integration organization that is an international organization referred to in Annex IX, Article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply *mutatis mutandis* to participation by such regional economic integration organization in this Agreement, except that the following provisions of that Annex shall not apply:

(a) Article 2, first sentence; and

(b) Article 3, paragraph 1.

2. In cases where a regional economic integration organization that is an international organization referred to in Annex IX, Article 1, of the Convention has competence

over all the matters governed by this Agreement, the following provisions shall apply to participation by the regional economic integration organization in this Agreement:

(a) at the time of signature or accession, such organization shall make a declaration stating:

- (i) that it has competence over all the matters governed by this Agreement;
- (ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the organization has no responsibility; and
- (iii) that it accepts the rights and obligations of States under this Agreement;

(b) participation of such an organization shall in no case confer any rights under this Agreement on member States of the organization;

(c) in the event of a conflict between the obligations of such organization under this Agreement and its obligations under the Agreement establishing the organization or any acts relating to it, the obligations under this Agreement shall prevail.

Article 29. Entry into force

1. This Agreement shall enter into force thirty days after the date of deposit with the Depositary of the twenty-fifth instrument of ratification, acceptance, approval or accession in accordance with Article 26 or 27.

2. For each signatory which ratifies, accepts or approves this Agreement after its entry into force, this Agreement shall enter into force thirty days after the date of the deposit of its instrument of ratification, acceptance or approval.

3. For each State or regional economic integration organization which accedes to this Agreement after its entry into force, this Agreement shall enter into force thirty days after the date of the deposit of its instrument of accession.

4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its Member States.

Article 30. Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

Article 31. Declarations and statements

Article 30 does not preclude a State or regional economic integration organization, when signing, ratifying, accepting, approving or acceding to this Agreement, from making a declaration or statement, however phrased or named, with a view to, *inter alia*, the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declaration or statement does not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or regional economic integration organization.

Article 32. Provisional application

1. This Agreement shall be applied provisionally by States or regional economic integration organizations which consent to its provisional application by so notifying the Depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.

2. Provisional application by a State or regional economic integration organization shall terminate upon the entry into force of this Agreement for that State or regional economic integration organization or upon notification by that State or regional economic integration organization to the Depositary in writing of its intention to terminate provisional application.

Article 33. Amendments

1. Any Party may propose amendments to this Agreement after the expiry of a period of two years from the date of entry into force of this Agreement.

2. Any proposed amendment to this Agreement shall be transmitted by written communication to the Depositary along with a request for the convening of a meeting of the Parties to consider it. The Depositary shall circulate to all Parties such communication as well as all replies to the request received from Parties. Unless within six months from the date of circulation of the communication one half of the Parties object to the request, the Depositary shall convene a meeting of the Parties to consider the proposed amendment.

3. Subject to Article 34, any amendment to this Agreement shall only be adopted by consensus of the Parties present at the meeting at which it is proposed for adoption.

4. Subject to Article 34, any amendment adopted by the meeting of the Parties shall come into force among the Parties having ratified, accepted or approved it on the ninetieth day after the deposit of instruments of ratification, acceptance or approval by two-thirds of the Parties to this Agreement based on the number of Parties on the date of adoption of the amendment. Thereafter the amendment shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendment.

5. For the purposes of this Article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its Member States.

Article 34. Annexes

1. The Annexes form an integral part of this Agreement and a reference to this Agreement shall constitute a reference to the Annexes.

2. An amendment to an Annex to this Agreement may be adopted by two-thirds of the Parties to this Agreement present at a meeting where the proposed amendment to the Annex is considered. Every effort shall however be made to reach agreement on any amendment to an Annex by way of consensus. An amendment to an Annex shall be incorporated in this Agreement and enter into force for those Parties that have expressed their acceptance from the date on which the Depositary receives notification of acceptance from one-third of the Parties to this Agreement, based on the number of Parties on the

date of adoption of the amendment. The amendment shall thereafter enter into force for each remaining Party upon receipt by the Depositary of its acceptance.

Article 35. Withdrawal

Any Party may withdraw from this Agreement at any time after the expiry of one year from the date upon which the Agreement entered into force with respect to that Party, by giving written notice of such withdrawal to the Depositary. Withdrawal shall become effective one year after receipt of the notice of withdrawal by the Depositary.

Article 36. The Depositary

The Director-General of FAO shall be the Depositary of this Agreement. The Depositary shall:

- (a) transmit certified copies of this Agreement to each signatory and Party;
- (b) register this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) promptly inform each signatory and Party to this Agreement of all:
 - (i) signatures and instruments of ratification, acceptance, approval and accession deposited under Articles 25, 26 and 27;
 - (ii) the date of entry into force of this Agreement in accordance with Article 29;
- (iii) proposals for amendment to this Agreement and their adoption and entry into force in accordance with Article 33;
- (iv) proposals for amendment to the Annexes and their adoption and entry into force in accordance with Article 34; and
- (v) withdrawals from this Agreement in accordance with Article 35.

Article 37. Authentic texts

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

In witness whereof, the undersigned Plenipotentiaries, being duly authorized, have signed this Agreement.

Done in Rome on this Twenty-second day of November, 2009.